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**ADMINISTRATION OF JUSTICE PROGRAMS**

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Y 4. F 76/1:AD 6/5

Administration of Justice Programs,...

**HEARING**

BEFORE THE

**COMMITTEE ON FOREIGN AFFAIRS  
HOUSE OF REPRESENTATIVES**

**ONE HUNDRED THIRD CONGRESS**

**FIRST SESSION**

**SEPTEMBER 14, 1993**

Printed for the use of the Committee on Foreign Affairs



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# CONTENTS

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Page

## WITNESSES

Timothy Wirth, Counselor, Department of State .....	2
James H. Michel, Acting Deputy Administrator, Agency for International Development .....	10
Mark Richard, Deputy Assistant Attorney General, Department of Justice .....	12
John Shattuck, Assistant Secretary of State for Human Rights and Humanitarian Affairs .....	15

## APPENDIX

Prepared statements:	
Hon. Timothy E. Wirth .....	39
Hon. Benjamin Gilman, opening statement .....	43
Hon. James H. Michel .....	45
Hon. Philip Heymann, Deputy Attorney General, Department of Justice ..	53
Questions and responses for the record submitted to Ambassador James Michel, Hon. Mark Richard, and Hon. Timothy E. Wirth .....	58
Information for the record submitted by Agency for International Development .....	98



# ADMINISTRATION OF JUSTICE PROGRAMS

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TUESDAY, SEPTEMBER 14, 1993

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FOREIGN AFFAIRS,  
*Washington, DC.*

The committee met, pursuant to call, at 10 a.m., in room 2172, Rayburn House Office Building, Hon. Lee H. Hamilton (chairman of the committee) presiding.

Chairman HAMILTON. The meeting of the committee will come to order.

I want to thank our witnesses for appearing this morning. I regret that the Deputy Attorney General is not able to join us. I understand he has an illness in his family and of course we understand.

I also know that he has a particular interest in the program that we have and we are very pleased that the Deputy Assistant General, Mark Richard, could appear in Mr. Heymann's absence.

The administration of justice and other judicial and legal reform programs generally have not received much attention. I want this hearing and the legislation which may develop to focus on what these programs are about, how they are coordinated within the executive branch and how we can improve their effectiveness as they are implemented in more and more countries.

The administration, of course, has identified the promotion of democracy as one of the pillars on which future aid decisions will be based. Legal reform programs are a significant component of democracy initiatives.

As you know, I am interested in several basic questions about legal reform programs within the executive branch:

Who is in charge, given our very limited foreign aid budget?

How does the executive branch determine which countries will receive assistance?

What are the standards for eligibility?

What are the objectives for the programs?

How do we measure results? How do we determine success?

How and where does police training fit both with eligibility concerns and program objectives?

Do we need a revision of the section 660 of the Foreign Assistance Act to make it consistent with current objectives?

We have been running a number of administration of justice programs since 1985, particularly in Latin America. What have we learned from that experience?

I understand that these are not easy questions. Legal reform, of course, deserves our support. I recognize that given the budgetary

constraints, the case must be made for every foreign aid program that we value.

I would like to begin building the case for administration of justice programs and other legal reform initiatives. I am hopeful that this hearing will start that process.

Mr. Wirth, we are very pleased to have you with us this morning. I understand you may have to leave for a White House engagement very shortly. We appreciate your willingness to come even though your schedule is tight this morning.

I think I will let you begin with your statement and then Ambassador Michel and Mr. Richard can follow and Mr. Shattuck can take your place and respond to any questions, if that procedure is all right with you?

#### STATEMENT OF TIMOTHY WIRTH, COUNSELOR, DEPARTMENT OF STATE

Mr. WIRTH. Mr. Chairman, thank you.

I greatly appreciate being here this morning and appreciate your understanding. As you know, this has been an extraordinarily busy time for the Department of State with yesterday's remarkable events and the kick off this morning of the extremely important and high priority NAFTA initiative by the President.

So, with your indulgence, I would like to submit a detailed statement answering specifically the very good questions that you asked in your letter. Then to bring this down from the abstract to the specific, I would like to describe the impacts of the administration of justice program in the context, if we might, of the counternarcotics issue.

John Shattuck, who is the Assistant Secretary for Democracy, Human Rights and Labor, assuming that that unit is created by the Congress in the enabling legislation, will then join the committee and be here to answer questions.

We commend your decision to hold this hearing and to signal the Congress' support for the administration of justice programs. The written statement, which I noted earlier will be included in the record, goes on in some detail about the administration of justice programs, how we coordinate and implement them, and I hope, Mr. Chairman, answers the good questions that you posed in your letter of invitation.

Let me briefly start, if I might, by just outlining verbally for the record what it is we believe we are talking about in discussing administration of justice programs. These are an important part of the U.S. effort to promote democratic change. Democratization is more than just free elections. At its core, a democratic state is ruled by law not power or personalities.

Democratic states are more likely to protect laws that protect individual rights and respect for those laws. Such systems succeed only when a strong independent judiciary serves as the arbiter of the law. That is what we mean by a system operating under the rule of law.

A central tenet of the rule of law is that government officials are held accountable for their actions by a independent judicial authority. Societies lacking an independent judiciary are often character-



ized by human rights abuses and security forces acting with impunity.

Building a judiciary that is strong enough and independent enough to ensure that government officials and security forces operate within the law is a long-term administration of justice objective. From legislative reform to judicial training, law enforcement training to prison reform, a constant goal of our program is to assist in establishing the rule of law.

Our administration of justice programs should provide emerging democracies with the tools and training necessary to draft laws, create democratic institutions to enforce those laws and build strong independent judicial systems. Every administration of justice program should be designed and implemented with the understanding that it is part of our overall efforts to promote democratic change.

I note that definition, Mr. Chairman, just to make sure that we are all understanding: first, what it is we are talking about, and second, how we believe that it fits within the context of President Clinton's number one foreign policy goal related to democracy.

There is no question about the fact, as we have been reviewing the administration of justice programs throughout the government, that there have been some coordination problems. For example, within Latin America, a great number of administration of justice programs have been run by the Latin America Bureau using USAID funds and input from the Department of Justice, but I think a number of people have been left unhappy with the result in terms of their involvement and their credit and engagement in these programs.

Similarly, we have had some different interpretations in the former Soviet Union about the administration of justice programs, when they should be undertaken, substantively what they should be doing and again a coordination problem has emerged. I think that these are part of the rationale for this hearing.

I know that you understand these problems and that is what we are here to discuss today.

In response to these, the administration has undertaken PRD-26, the Presidential review of all of our democracy programs. That review is currently out for comment throughout the administration.

We hope to have that review completed shortly. Out of that will come an interagency working group and out of the interagency working group will come a coordination mechanism to which all parts of the administration agree. We would have a new coordinating mechanism under my auspices as the new Under Secretary for Global Affairs in the State Department. The State Department will be the negotiator if there are differences over administration of justice programs.

Having briefly described what it is we are talking about and having made reference, which I have done in greater detail in my written testimony, to some of the coordinating problems that have existed in the past and the process the administration has set up to achieve much better coordination, let me turn and put this in the specific framework of our efforts in counternarcotics which goes closely with administration of justice and the establishment of democracy programs.

The Clinton administration has formulated and is implementing its own strategy toward foreign assistance. Some of this builds on initiatives taken during the Reagan-Bush years, and some is new. The Clinton stamp is most clearly outlined in the address President Clinton made at American University just 5 weeks after his inauguration: "Our aid policies must do more to address population pressures; to support environmentally responsible, sustainable development; to promote more accountable government; and to foster a fair distribution of the fruits of growth among an increasingly restive world population."

Democracy, sustainable development, effectiveness, these are the tests that this administration will apply to foreign assistance proposals, and I ask you to apply them as well to any program we send up to you.

For example, we must reformulate the approach we are taking to our international counternarcotics programs. These are inextricably intertwined with the administration of justice programs, which are broadly discussed in my written statement. Counternarcotics has taken a bad rap in recent weeks and months on the Hill and in some of our Nation's press.

Perhaps the past administration's programs deserve the bad press; perhaps they don't. But we would like to discuss our counternarcotics strategy and its relationship to administration of justice. We will find some important differences.

Lee Brown proposes to give more emphasis to demand reduction at home. We will put to bed the senseless argument about whether narcotics producers or consumers are most at fault. This is a serious and high priority national program, and under the able and experienced leadership of Lee Brown, the domestic component of the strategy is underway, and targeted on demand.

Internationally, we will shift emphasis away from transit interdiction, and focus more on source countries. Interdiction at sea and in the air is enormously expensive, and has not produced the same results on a per-dollar basis as has pressure at the source. We intend to hit the traffickers at the heart of their operations, rather than placing the greatest attention on nibbling at their transportation networks.

In the source countries, Colombia, Bolivia, and Peru, for example, we obviously want to continue joint law enforcement cooperation. But we also want to build democratic institutions that strengthen the government's ability to challenge and contest powerful narcotics trafficking organizations.

We want to support programs that give poor farmers alternative development opportunities to feed their families without growing coca or heroin poppy. And we want to press administration of justice programs that will strengthen the nation's ability to investigate, prosecute, and imprison narcotics traffickers.

It all ties together, Mr. Chairman. We can't implement administration of justice programs without considering the impact on counternarcotics, or antiterrorism, or democratic institution building. And we can't develop a serious counternarcotics program without an administration of justice component.

I was in the Andes last month. Bolivia, with an able new President and Vice President, and an impressive commitment to democracy, is making real progress in the war against narcotics.

The law enforcement agencies are now able to take down networks they find anywhere in the country. The courts and legal system are capable of delivering justice within the rule of law to suspected traffickers. The government has taken back control of most of the country, even in the huge river network in the Amazon.

Coca production is on the decline. I walked through fields in the Chapare Valley that 5 years ago were producing coca, were not under government control, and certainly could not be visited by an outsider. Now they produce bananas and pineapples for export.

Fundamentally, Bolivian farmers are just like our own; if given the opportunity, they would far rather earn a decent living honestly.

There is another vision I want to share with you. I also spent several days in Colombia. There I met with prosecutors who wore body armor in the office, rode in armored cars, and varied their schedule every day to avoid assassination.

I went into the countryside to observe aerial fumigation of heroin poppy, where the sprayer required a covering force of 20 infantrymen and four helicopters to protect him from ground fire.

I drove past the remains of the supreme court building, destroyed in a firefight with guerrillas in 1980, and other buildings destroyed in recent months in a terror bombing campaign by narcotics traffickers. I heard of—perhaps met—legislators and government officials bought and owned by the traffickers.

This is a society that is deeply embattled, threatened by high-powered and well-financed narcotics cartels, but seriously committed to the struggle against narcotics trafficking. And here, as in Bolivia, a major component of their strategy is an aggressive, progressive, and modern administration of justice program.

The United States has provided \$36 million in administration of justice funds to Colombia to strengthen court administration, judicial and prosecutorial training, and investigative skills.

Colombia is not unique nor is the Andean Ridge. I have recently read messages from our Ambassadors in South Africa, Zambia, and Nigeria describing earlier stages of the same social disaster. Princeton Lyman, former Ambassador to Nigeria and current Ambassador to South Africa, put it graphically:

"Narcotics traffickers not only corrupt, but undermine the basic integrity of institutions of government, the legal system, and security. The money is so great that it can be spread upwards to encompass even the highest level officials while employing at its base hundreds, indeed thousands of poorer people for whom the payment to be carriers is considered enormous. Once deeply entrenched in the society, especially the government, it is almost impossible to root out."

Mr. Chairman, members of the committee, we face a choice of visions. One is a carefully crafted program of democracy building, counternarcotics, administration of justice, economic development, and other measures related to sustainable development and population stabilization. These all fit together, and are part of our

American commitment to strengthen democratic institutions and work for stability in these threatened countries.

The other vision is not pretty: An even greater flow of narcotics, pervasive influence—probably to the point of the establishment of narco democracies—and a growing instability that is counter to our long-term interests. The first vision will require a sustained effort, close cooperation between the executive branch and the Congress, and a careful process of explaining our goals and strategy to the American people.

The President outlined his vision in his American University address: "If we could make a garden of democracy and prosperity and free enterprise in every part of this globe, the world would be a safer and a better and a more prosperous place for the United States and for all of you to raise your children in."

That should be our vision, too: Democracy, sustainable development, administration of justice, combating narcotics.

Members of the committee, this is a package deal, in which the administration of justice is a crucial component. It is foolish to try to do one while ignoring the others.

We welcome your guidance and your constructive criticism. We will do our utmost to ensure that the programs are managed in a way that gives maximum advantage to the American people for every dollar invested. I hope we can count on your support.

I appreciate the opportunity to submit the detailed answers to your questions and to try to put administration of justice into the context of the high priority narcotics programs, all of which are not only under review, but are, we think, becoming targeted in a way that provides a package that the Congress and the executive branch can be a partner in and we had hope a partner in very effectively.

Chairman HAMILTON. Thank you very much, Mr. Counselor, we understand you have to leave.

[The prepared statement of Mr. Wirth appears in the appendix.]

#### STRATEGY ON NARCOTICS

Chairman HAMILTON. Mr. Gilman.

Mr. GILMAN. Mr. Wirth, when can the committee anticipate receiving the new strategy on narcotics?

Mr. WIRTH. We hope within the next 2 to 3 weeks. In the final strategy, we are in a long and sometimes very cumbersome, as you know, PRD process. We hope that that will follow quickly thereafter.

Mr. GILMAN. It has been almost a year now without any strategy. We hope you would try to expedite it and get it into our hands as quickly as possible.

Mr. WIRTH. I understand that. I presented this morning the basic outline of the approach that the administration would like to take on the international side of this. We will do everything we can to push that, Mr. Gilman.

I appreciate your support and continuing interest. I must say your constant pushing is very helpful to us.

Mr. GILMAN. Thank you.

Mr. Wirth, we just returned from a narcotics conference in Taiwan, where a number of the regional countries were present and

some of our own people were there who were out on the battlefield. A number of them told us they are running on fumes because of the severe cutbacks in our international narcotics program.

They are furloughing cars, putting them in barns because the administration is saying you have to cut on equipment. At a time when the flow of substance is increasing, we hope you take a look at that.

Mr. WIRTH. We agree with you entirely. The basic problem is if you look at the proposed budgets now in the markup cycle, not totally completed here in the House, but look at the appropriations markup in the Senate, and look at not only the INM budgets but the FMF and ESF counterparts to that, it is extraordinarily difficult for us to continue in fiscal year 1994, in the comprehensive and broad way you would like to see happen.

I think this is a great signal for alarm. The President personally is very worried about this. He has noted this himself on a number of occasions. I think we are going to have to do our best in muddling through the budgets that we have for fiscal year 1994.

I think those in the Congress who are as concerned as you are about these counternarcotics programs are going to have to huddle with those of us in the administration for fiscal year 1995, and do together a much better job of presenting the case to the rest of the Congress and to the American public.

Mr. GILMAN. I would hope that your office would weigh in wherever we still can at this late stage, to see that we have more than just a skeleton crew out there because of these funding levels.

Mr. WIRTH. We have certainly done this. We hope the Senate mark is significantly, if not significantly better, at least more encouragingly, better than the mark that we have seen coming out of the appropriations process in the House.

Mr. GILMAN. Thank you.

#### BUDGET CUTBACKS

Mr. WIRTH. Again, Mr. Gilman, we are deeply appreciative of your help and support. I think we can say we will do the best we can in a very tough fiscal budget year, 1994.

I want to underscore the dramatic problems we face in fiscal year 1995. If you look at the tentative marks that have been described in terms of the allocation of funds to the international account, we have been notified, and this has been made public, of the fact that there has been a 5 to 10 percent cut across the board.

If we hold harmless the accounts for the Middle East, and I would bet, and you, I think, would not want to wager on this in any way other than that would happen particularly after the extraordinary events over the last few days, the costs and commitments to the Middle East will not only hold but increase.

If we hold the commitments to the former Soviet Union, Russia in particular, and to Turkey, and therefore to Greece, if we hold these accounts harmless, then these cuts are placed against a third or less than a third of the budget that remains, which means that for everything else, if we continue business as usual, and the way the current accounts that are set up, if we continue business as usual, that means everything else outside of those elements that

are held harmless takes a cut of somewhere between 50 percent and two-thirds.

This is not a presentation, Mr. Gilman, to say if we don't watch out, we will have to sell the Statue of Liberty. You and I have heard that old Statue of Liberty argument over and over again.

But these are the raw numbers. If you look at the marks that are tentatively being described and you hold harmless commitments that have been made and that probably will be held harmless in these cuts of 5 to 10 percent across the whole budget, they will be made against a very small percentage of that whole budget, which means that everything else that we are talking about is going to receive an enormous chop.

That means, Mr. Gilman, that we will not be able to develop a counternarcotics strategy that relates to democracy and the administration of justice programs in any kind of fashion whatsoever. That means we are not going to be able to pursue any kind of new global goals from child health to education to sustainable development, all of the new post-cold war themes that we have been talked about now for the last 4 years with enormous excitement.

We cannot do it. So this is the kind of huddling that we will all have to do together to redefine and relook at our whole national security picture. If we don't do that, we are not going to be able to reach the kind of goals being discussed in Taiwan, that you and I have talked about on many occasions, and that many others share with us. It is a brutal fact.

Mr. GILMAN. Thank you, I look forward to that huddle.

Chairman HAMILTON. You have made quite a push. The administration supports these cutbacks with regard to these programs; does it not?

Mr. WIRTH. Mr. Chairman, we have to get an appropriations bill passed. You will note in the administration's budget submission that our budget submission was quite different from the result that has occurred. We understand that and understand the need to get through this 1994 cycle.

Chairman HAMILTON. You are not suggesting any cutbacks in the major allocations of foreign assistance to Israel, Egypt, or Turkey?

Mr. WIRTH. No.

Chairman HAMILTON. If you don't make any reductions there and you still have to come in under your budget or ours in the Appropriations Committee, you are still going to have to make sharp cutbacks in these other programs?

Mr. WIRTH. Our mark to start with, as you know, is quite different from that in the Congress. We understand the allocation programs that were made in terms of the allocation of the budget to the various subcommittees and what proceeded from there.

Chairman HAMILTON. When you said they are quite different, what do you mean?

Mr. WIRTH. If you look at the opening budget of the administration, for example, on these programs and others, the administration, the new administration started with our first cut at the budget in January and February. I think that was sent up here in February, where, for example, we in the counternarcotics programs were hoping for significantly stronger funding in the INM account, in the ESF account, and for FMF, that whole package, than we

were able to receive for all of the programs that are part of the counternarcotics programs.

Chairman HAMILTON. Are you suggesting the total requests of the administration were substantially higher than Congress recommended?

Mr. WIRTH. I would have to go back and look at the levels. I would be happy to submit that for the record, Mr. Chairman.

I was responding in the discussion with Mr. Gilman, where we were with these programs and the problems we will have in sustaining and maintaining these programs. And as we get to fiscal year 1995, I have called it a huddle, but we are going to have to have it at the highest and most intense level, a discussion about what we believe we can accomplish and we can go out and make that part of the budget cycle for fiscal calendar 1995.

Mr. GILMAN. Would you yield?

Chairman HAMILTON. Yes.

Mr. GILMAN. I have been informed by my staff that yesterday the Senate Foreign Operations Committee funded INM at the \$100 million level, the same level that the House had funded it at and that is \$48 million less than the President's budget.

What I am asking is did anyone from the administration go in and make a strong pitch for increased funding in the Foreign Operations Committee?

Mr. WIRTH. I testified before the Foreign Operations Committee on these programs, Mr. Chairman, in the middle of July. We have made it very clear in a number of communications about what high priority these programs are to us.

Mr. GILMAN. So you did make a strong case?

Mr. WIRTH. Absolutely.

Mr. GILMAN. Is there any opportunity for you to go into the conference and try to have that sum increased?

Mr. WIRTH. You and I know where the conference can go. If the Senate mark is \$100 million for INM or \$97 million, and the House mark is the same, I believe those are the boundaries of the conference.

Mr. GILMAN. That is the commission that made the decision. I would hope you would make a strong appeal to the full Senate.

Thank you.

Mr. WIRTH. Thank you, Mr. Gilman.

Chairman HAMILTON. Thank you very much, Mr. Wirth.

Mr. WIRTH. Thank you, Mr. Chairman. I look forward to working with you and huddling, at the soonest possible time.

Chairman HAMILTON. We will proceed with Ambassador Michel, the Acting Deputy Administrator for the Agency for International Development.

Taking Mr. Wirth's place will be Mr. John Shattuck, the Assistant Secretary of State for Human Rights and Humanitarian Affairs.

Mr. GILMAN. Mr. Chairman, I had an opening statement. I would like to submit it for the record.

Chairman HAMILTON. Without objection, that will be put into the record right after my opening comments.

[The opening statement of Mr. Gilman appears in the appendix.]

Chairman HAMILTON. Ambassador, you may proceed.

**STATEMENT OF JAMES H. MICHEL, ACTING DEPUTY ADMINISTRATOR, AGENCY FOR INTERNATIONAL DEVELOPMENT**

Mr. MICHEL. Thank you, Mr. Chairman.

I would like to express appreciation to this committee for conducting this timely and important hearing on a subject I have been closely associated with for a long time. I appreciate the opportunity to be here before you today.

I remember a little over 8 years ago when a member of this committee, Michael Barnes of Maryland, offered an amendment to the Foreign Assistance Act called, "Administration of Justice in Latin America and the Caribbean." This committee approved that amendment.

It was subsequently passed by the House, accepted by the Senate, and became section 534 of the Foreign Assistance Act. That was the first explicit legislative endorsement of what was then a very nascent emphasis on administration of justice in our foreign assistance programs.

Since then, that same authority has been incorporated by reference into the legislative authorization for assistance to Eastern Europe and to the newly independent States of the former Soviet Union. Over those 8 years since the enactment of the section 534, USAID has developed substantial experience and expertise in implementing administration of justice programs.

Not all of that experience has been successful, particularly that of the earlier years, but we have learned from our experience and we think that we are doing a much better job now in incorporating the administration of justice into the U.S. foreign assistance program.

I have submitted for the record, Mr. Chairman, a detailed statement that describes that experience and the lessons learned, and seeks to answer the questions that you posed at the outset of this hearing.

In Latin America, we began with what was intended to be a programmatic response in support of a transition to civilian-elected government, which had begun in the late 1970's. So there has been more experience in that region than in others.

We are now seeing this similar phenomenon, of a transition to elected civilian government throughout the world, and the administration of justice emphasis has become truly global.

Looking back at the experience of Latin America, we now see a truly indigenous reform movement that has taken root. USAID and the U.S. Government cannot claim credit for that. The credit belongs to the Latin American reformers.

But our programs have supported them, have broadened and deepened their efforts and we have learned from each other. It is far more likely today than it was 8 years ago that in Latin America you will find judges appointed under a merit selection system and find judges and court personnel who have received formal training. Alternative dispute resolution mechanisms such as mediation and arbitration and conciliation are in place, relieving the congestion of the courts and providing more timely remedies.

You will find public defense services available to indigent defendants in more and more countries. You will find professional court managers who are freeing the time of judges so they can con-



concentrate on judging and deciding cases rather than the administrative details of managing a court system.

You will find the issue of accountability of government an increasingly dominant public issue, both in public discourse and in legal proceedings.

A growing number of nongovernmental organizations are active in the region at the local level and in a growing international network. Other donors have initiated programs following the lead of the United States, including the World Bank and the Inter-American Development Bank.

Today, under the leadership of Brian Atwood, the new Administrator, USAID regards the strengthening of democracy not as a separate activity but as an integral part of fostering sustainable development. We want to support economic and social progress in a manner that involves maximum public participation and support for democratic institutions that foster that participation and protect the rights of the people.

Strengthening democracy is one of the four priority areas that Mr. Atwood has identified for USAID's mission. I know these areas are no stranger to the Hamilton-Gilman report. They are economic growth and the reduction of poverty, the environment, population and health and democracy integrated together in a manner that supports sustainable development.

This is not a unique approach for USAID. There is an international consensus shared increasingly by donors, aid recipients and the like, that good governance and popular participation are the best foundation for sound projects that will achieve sustainable development.

Within this context, USAID will continue to support improved administration of justice and a strengthened rule of law. Our programming decisions will reflect the overall country strategy developed by the Country Team, and will consider the following factors: What is the need for addressing this area of institutional strengthening; what is the opportunity and what is the capacity of the United States to make a meaningful contribution; what is the local commitment; what is the potential for having a demonstration effect that will carry over more broadly in the region or on a regional basis; and how important is the administration of justice in a particular country to the overall policy interests of the United States?

Our emphasis will be on results. We are strengthening our capacity for evaluation. We are strengthening our policy coordination function and our technical support capability.

I want to say quite unambiguously, Mr. Chairman, that we welcome the establishment of a coherent interagency coordination mechanism under the leadership of the Department of State and with the participation of the Department of Justice.

There have been efforts at interagency coordination, but they have not been consistent and coherent. They have been different for different countries and different regions and different programs, and we really do need to bring this together. I am delighted to see this being done in this administration under the PRD-26 exercise.

Some forms of international cooperation in justice matters do relate less to USAID's mission of sustainable development than to the responsibilities of other agencies.

As Mr. Wirth mentioned, operational law enforcement cooperation is something that we would not regard as falling within the sustainable development mandate of USAID. We think it is important that these activities all be coordinated, and the example of Bolivia, given by Mr. Wirth is a good one, where there has been excellent interagency coordination.

We must also be careful, I suggest, not to dilute USAID's mission for sustainable development just as we are seeking to sharpen its focus. We have been encouraged by the strong focus on administration of justice internationally as a highly relevant factor in sustainable development. We look forward to improving our capacity to implement programs in this area in furtherance of President Clinton's foreign policy and within the framework of a coordinated interagency agency effort.

We are grateful for the early support given by this committee to administration of justice programs and for your continuing interest. We will do our best to merit your confidence.

Thank you.

[The prepared statement of Mr. Michel appears in the appendix.]

#### **STATEMENT OF MARK RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE**

Mr. LANTOS [presiding]. Thank you very much. Mr. Richard.

Mr. RICHARD. Thank you very much, Mr. Chairman. Mr. Chairman, distinguished members of the committee, I am here today on behalf of the Department of Justice in place of the Deputy Attorney General, Philip Heymann, who was unfortunately prevented by unforeseen circumstances from appearing before you this morning. He has asked me to extend his sincere apologies for his unavoidable absence and asks that his statement be entered into the record.

Mr. LANTOS. Without objection.

[The prepared statement of Mr. Heymann appears in the appendix.]

Mr. RICHARD. With your permission, I have some brief opening remarks.

Let me begin by explaining my role at the Department of Justice so there will be an appreciation of my perspective.

I am a Deputy Assistant Attorney General in the Criminal Division. In that capacity, I oversee most of the criminal law enforcement matters that impact on international aspects. We have a variety of initiatives being run out of the Criminal Division focusing on international law enforcement issues, including a fairly new initiative dealing with international training.

The emphasis on legal reform over the last few years is supported by sound foreign policy and development considerations that are within the purview of the witnesses for the Department of State and the Agency for International Development to address. However, there are also important practical law enforcement reasons for emphasizing legal reform, and I would like to touch on these with the committee.

The interests of the Department of Justice in the development of foreign legal systems is based increasingly on the growth of transnational crime over the last two decades, particularly with respect to the areas of terrorism, narcotics, organized crime, fraud

and money laundering. Crime, no less than any other enterprise, crosses international boundaries with ease aided by efficient international communications and transportation.

It is obvious that the United States cannot prosecute every offense that has some conceivable nexus to this country, and that even if we tried to, we necessarily have to rely on greater cooperation with other countries to do so. Any way you look at it, we must cooperate to ensure that transnational offenses impacting on the United States are investigated and prosecuted.

This interdependence with other countries will necessitate close cooperation and a good understanding of one another's systems.

On one level, we are working to build cooperative relationships through mutual legal assistance treaties and modern extradition treaties. But on another level, we are also attempting to ensure that the countries with which we are cooperating incorporate rules to protect the accused, limit police powers, ensure equitable tribunals and provide decent prisons.

The Department of Justice will seek to promote the ability of foreign countries to investigate offenses effectively, with due regard for human rights, to prosecute and adjudicate competently, and, in the case of conviction, to punish the guilty in accordance with accepted international norms.

In this regard training offers a means of fostering cooperation through harmonizing procedures and emphasizing principles that are common to all civilized criminal justice systems.

We expect that our interest in promoting the capability of the legal systems to prosecute crimes fairly will overlap with the interests of the foreign policy agency to promote democracy through respect for international norms and the rule of law.

In fact, our expectation is being fulfilled in part in some areas of Latin America, in particular, Bolivia and Colombia, where we have been working since last year with State and USAID in training prosecutors, judges and police.

As the foreign affairs agencies focus more on legal reform as part of their development strategy, we look forward to a greater role in the Department of Justice in assigning priorities, developing strategies, designing program content and delivering training and assistance.

The Department of Justice anticipates that the proposed consultative process, now under consideration within the administration, will enable it to have significant input at two levels: one, at the initial planning stage, when broad decisions are made regarding allocation of resources for regions and particular countries; and, two, also at the implementation stage, when programs are being designed and delivered.

With regard to planning a development strategy, we understand the primary responsibility of the foreign affairs agencies in this area. However, the decisions they reach, to the extent they involve administration of justice and legal reform programs, have a direct impact on our domestic law enforcement strategy and operation.

Given that circumstance and the degree of our unique enforcement experience, relative to that of our colleagues in the foreign affairs community, it is important that the Department of Justice participate in the policy-coordinating mechanism.

We could and want to contribute more in implementing administration of justice and legal reform programs. We believe that in many disciplines we are well equipped to supply training and technical assistance for law reform efforts.

In dealing with functions such as the organization and training of police, prosecutors and courts, officials abroad frequently want to hear from their counterparts in governments who have current practical experience in these disciplines.

Moreover, the use of resources that are available in the government would permit us to establish ties with foreign law enforcement officials on which effective international law enforcement depends, thereby enhancing domestic law enforcement efforts.

In addition to enhancing our own capacity to deal with transnational crime and strengthening law enforcement abroad, training carried out by the law enforcement personnel will provide another important benefit; by showing prosecutors abroad how to build cases on methodical investigation, forensics, detailed record-keeping and careful preparation, all consistent with human rights, we provide an alternative to reliance on forced confessions and other abuses of human rights.

Of course, there is more than one way to teach these lessons. ICITAP and the Criminal Division's Office of Professional Development and Training convey them through excellent workshops and exercises, as well as other programs, and we expect and anticipate that those programs will continue to do so. We look forward to more participation in decisions as to which countries receive what type of training.

In conclusion, I would offer three observations. First, the foreign affairs agencies and the Department of Justice should continue to develop a process by which the Department can factor its domestic and international law enforcement programs into the latter's programs for legal and judicial reform at the levels of policy development, program design and implementation. Our experience in Colombia and Bolivia can serve as a model to follow in this regard.

Second, section 660 of the Foreign Assistance Act contains a prohibition on the use of most forms of foreign assistance funds for police training, subject to certain exceptions. We need to work with Congress to assure that prohibitions of this type do not unnecessarily interfere with the important work of law enforcement that needs to be done.

Third, we would like to work toward broader Department of Justice involvement in delivering the programs intended to develop viable judicial and legal institutions, including training police, judges and prosecutors.

Once again, Mr. Chairman, I am grateful for the opportunity to appear before the House Foreign Affairs Committee and to give you the Department of Justice's views on the administration of justice programs.

On behalf of Mr. Heymann, I would welcome the opportunity to answer, in writing or at a subsequent appearance, any additional questions you may have.

Thank you.

[The questions and responses thereto appear in the appendix.]

## BALANCING ALLOCATION OF AOJ PROGRAMS

Mr. LANTOS. I want to thank you gentlemen for excellent presentations.

I want to indicate my own bias; I am committed to these programs, but I have had some very severe questions with respect to the way we have proceeded and we have implemented them.

If one starts with the assumption that these are very useful in building democracies, and that is my point of departure, I am profoundly struck by the appalling imbalance among geographic areas which have received administration of justice assistance.xxx

I would like to ask, and any of you please feel free to answer, what has been the amount spent on Latin America? My recollection is that it is somewhere in the neighborhood of \$170 million.

My understanding is that in Central and Eastern Europe we have spent about \$2 million. If these figures are remotely accurate, and I would like you to respond whether they are remotely accurate, I am puzzled and disturbed.

I am also disturbed that, as I understand it, the forthcoming program with respect to Russia, which I believe is a \$60 million program, is exclusively in the field of commercial law or overwhelmingly in the field of commercial law and business law. It does not deal with the criminal arena at all.

I would be grateful if all three of you would sort of respond to these initial questions because it is very difficult for us who are dealing with the severe constraints of the foreign aid budget to see such an appalling lopsided pattern of allocation in a program which clearly has ramifications for the former Soviet Union Republics, the countries of Central and Eastern Europe and many other areas.

I see, Secretary Shattuck, that you are eager to get at me; so, I will give you the first crack.

Mr. SHATTUCK. Thank you, Mr. Chairman.

We appreciate your interest in these programs and your support for them. As a bearer of a portfolio in human rights, in particular, in the Department of State, I want to indicate the strength that we believe these programs bring to our human rights monitoring and enforcement, and the connection they help establish between human rights and democratization, which as Counselor Wirth indicated in his testimony, is one of the three pillars of the President's foreign policy.

Mr. Chairman, I think your comment and question regarding the imbalance of resources is a very good one, and one, indeed, that we are beginning to address. It points precisely to the need for the additional interagency coordination which will be established, and established, I think, for the first time in a way that we hope will provide the kind of leadership and ability to look across regions that may not have been possible in the past.

Let me just lay out a few of the reasons why we think this new coordination effort is likely to be a success.

Mr. LANTOS. Before you do that, are my figures in the ball park? Are they accurate?

Mr. SHATTUCK. Generally, they are, yes.

Mr. LANTOS. How much have we spent in Latin America?

Mr. SHATTUCK. I will defer to Ambassador Michel.

Mr. MICHEL. The \$170 million is about right, it may be a bit more.

Mr. LANTOS. It is over \$170 million?

Mr. MICHEL. Yes, sir.

Mr. LANTOS. How much have we spent on Africa?

Mr. MICHEL. On Africa it had been running between \$3 million and \$5 million a year for the last several years. Part of this comparison should take into account—

Mr. LANTOS. That the Latin American programs started before the others, I understand that. But, the amounts spent on Latin America is \$170-plus million. What is the cumulative amount on Africa?

Mr. MICHEL. I don't have the cumulative amount. I would say it is in the neighborhood of \$12 million since 1991.

Mr. LANTOS. How about Central and Eastern Europe?

Mr. MICHEL. It is about \$5 million over the last 3 years.

Mr. LANTOS. What other areas have been beneficiaries of the program?

Mr. MICHEL. Asia is about \$10 million.

Mr. LANTOS. What do you mean by Asia in this context?

Mr. MICHEL. That would include South Asia as well as the Pacific countries.

Mr. LANTOS. Anything else? The Middle East?

Mr. MICHEL. The Middle East has been even less, about \$2 million during that period. Of course, there is a new program for the new independent states. Up until now our program has been about \$12 million in the last 2 years. The new program in the neighborhood of \$60 million that is coming on stream will make that region the largest. I think what we are seeing is that, first of all, the overall levels for Latin American assistance are coming down.

Chairman HAMILTON. These are figures only for administration of justice, not democracy initiatives?

Mr. MICHEL. This is administration of justice, yes, sir.

Mr. LANTOS. It seems to me that these programs are fundamentally different from foreign aid programs in other areas. But having spent cumulatively \$170 million on Latin America while only \$12 million on Africa and \$5 million on Central and Eastern Europe, I wonder whether the program is not just moving on its own momentum in terms of the geographic pattern and whether a very new look may not be in order. Presumably, \$170 million in teaching administration of justice is now in place. I mean, that should have some permanent value.

Mr. MICHEL. I think it does.

Mr. LANTOS. We presumably ought to shift the very dramatic limited resources to these programs that are just as useful and that so far have received practically nothing.

Mr. MICHEL. As I was saying, Mr. Chairman, I think we are seeing a shift occurring in that there is some reduction for Latin America and there is some gradual increase elsewhere. In the case of the new independent states, a rather substantial increase is about to occur.

One of the lessons we have learned, I believe, is that this is not an area in which the early introduction of large dollar programs is necessarily wise. You have to work with them.

Mr. LANTOS. Nobody is recommending that. I am talking about the geographic pattern.

Mr. MICHEL. Yes. I am saying the pace at which you see that geographic pattern change will be more a subtle one for most of the regions. I can see events occurring in Africa now that are very reminiscent of the transitions we were seeing in the late 1970's and early 1980's, beginning to occur in Latin America.

I know that within USAID, we see administration of justice as an area that will achieve greater prominence in our programming throughout Africa. So I think you are absolutely correct to point out that there has been great disparity, to a large degree, historical, and I see that disparity lessening. Your point is well taken, but I would just qualify that observation by saying I think it will be a gradual shift, in most cases, rather than a sudden one.

Mr. SHATTUCK. Mr. Chairman, if I could just add to those comments in terms of the utility of the coordination mechanism that we are in the process of establishing, there is no question that better coordination is needed in this area. This is true, in many ways, for an important program that has evolved over time somewhat unevenly in different regions.

The reason why I think the new approach toward coordination offers great promise is that this really comes directly from Presidential leadership and is part of the Presidential review process and the PRD-26 on democracy programs that Counselor Wirth referred to in his testimony.

I think we have a broad based policy as well. This will not be the coordination of a very small area of democratization activities, but rather the broad theme of democracy policy will be at the heart of the coordination effort.

It will not be an attempt to micromanage. Therefore, the differences from region to region will be critically important. I think it offers great promise in terms of developing consistent standards and criteria for selecting countries to receive administration of justice assistance. It presents an opportunity for all areas of expertise to be channeled into different countries so that all the agencies in question will have an opportunity to participate in a way that may not have been as clear in the past.

I think it offers an opportunity for us to learn from experience, certainly the great experience in the Latin America on administration of justice programs provides some crosscutting and cross-regional opportunities. Of course, we recognize there all great differences in justice systems from one region to another.

Probably most importantly of all, Mr. Chairman, I think it represents opportunities to deal with the very difficult problems of scarce resources, to channel resources in ways that are going to advance the U.S. interest in democracy building on a worldwide basis, but nonetheless, recognizing that there are going to be certain countries that are going to be particularly susceptible to and appropriate for the kinds of assistance that we are able to provide.

I think for all those reasons, the coordinating mechanism which will be based in the State Department, under the Under Secretary for Global Affairs, but very much involving other agencies, particularly USAID and Justice, provides an opportunity to make the changes in this area that are needed.

## LAW ENFORCEMENT ASSISTANCE

Mr. RICHARD. Mr. Chairman, I would like to make somewhat tangential remarks, if I may. By and large, law enforcement has been inundated with requests, almost frantic requests at times, from Eastern Europe law enforcement and justice ministries seeking assistance and support in a variety of contexts: training, education and just dialogue, if you will, with respect to how do we do things and how do we accomplish it, how do we do it consistent with human rights concerns?

In general, U.S. law enforcement has not been in a position to respond to all of the requests, especially in a coherent, coordinated fashion. So I think in law enforcement in general, and certainly at the Department of Justice, we look forward to the establishment of these coordinating mechanisms, that Mr. Shattuck described, as a vehicle for changing all of this into a broader and better coordinated response.

Mr. LANTOS. Let me stop you there because I am very disturbed about the \$400 million SEED money. Practically none of it is provided for this desperately needed purpose. My understanding is, for instance, that State turned down a request of Justice to provide law enforcement aid to Hungary.

There is an explosion of illegal activities of all types in Hungary and throughout this whole region. Law enforcement is in a profound crisis. It is in a profound crisis because these were police states for decades. The police abused people. Human rights were trampled upon.

When the new democratic regimes came in, the police, by and large, became totally intimidated. Even the proper and appropriate use of force and police techniques are things they shy away from because they are afraid they will be accused of trampling on human rights and reestablishing the police state.

It seems to me, when Congress appropriated \$400 million for SEED, we definitely had in mind the building of civic societies; and civil societies need Western-style civilized law enforcement.

I would be grateful if any of you gentlemen would tell me why USAID has been so reluctant to use any of these resources for other activities in Central and Eastern Europe because I can assure you that private enterprise by itself will not create the kind of society we would like to see. They desperately need Western-style human rights and concerned administration of justice.

One of the reasons you find Congress occasionally moving into micromanagement is that we feel that the pattern of resource allocation without micromanagement is contrary to the wishes of Congress.

Ambassador Michel or anybody else who would like to respond.

Mr. MICHEL. Mr. Chairman, you certainly have my attention when you refer to micromanagement. We do wish to avoid that and be responsive to the Congress.

We think the decisions taken in the case of Eastern Europe, which are ultimately decisions by the coordinator in the Department of State, based on decisions by USAID and other agencies, reflect a sense of the priorities as seen at that time, with an enormous task and enormous array of issues to be dealt with. I do



think that we have seen a turning to the administration of justice to some degree.

More recently, I know that there has been, just this year, a grant to the Department of Justice for conducting a police training conference in Poland. I think that is indicative of simply sorting through the many immediate priorities that exist in a complex program of this sort.

I would think in the case of the newly independent states, that again it is a matter of sorting out the numerous priorities in the administration of justice programs that will get the most attention.

As I understand the program that is being developed, it does include an emphasis on institution building and the development of a criminal code and judicial reform, including the implementation of jury trials.

There is an interagency committee that has been discussing this, in which the Department of Justice participates. I believe that the mechanism to be set up for a more centralized coordination and balancing of all these issues, as Mr. Shattuck has described, will result in some changes in the programming as we go forward.

Mr. LANTOS. Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman.

Thank you, gentleman, for the testimony that you have conveyed to us. I have had a chance to catch up with it and read it all. I think it is very helpful to us.

I noticed that the Attorney General mentioned in his testimony, the legal and judicial system. He mentioned the success in promoting the changes in capabilities in the legal and judicial system have been done, in large part, to individual efforts. He commended Deputy Administrator Michel for his particular emphasis and effort over the years.

I have on various occasions visited some of the programs that you helped initiate. I want to convey how much I appreciate the leadership that Ambassador Michel has brought to this area as a career public servant. I think this is an extraordinarily fine demonstration of one person's effort to motivate others.

I want to focus a bit on the legislative recommendations that are made in two of the statements today; the one by the Attorney General and the other by Counselor Wirth. They both go to the subject of section 660 of the Foreign Assistance Act of 1974, which relates to police training, as we all know. This has been a controversial issue. We have had a number of waivers granted.

I believe it is in the testimony of Mr. Wirth, where he points a bit to the history of the waivers that have been given in recent years related to terrorism. The waivers are part of an effort to combat terrorism, and the Attorney General urges that the administration work with Congress to consider ways to ensure that prohibition of this type, meaning section 660, "do not interfere with the important work related to law enforcement that needs to be done."

This seems to be an issue where some Members of Congress refuse to budge. I think we need the best case that you can present as to why changes are needed. Why, in fact, it should work the other way? Why should exceptions specifically be noted to an ongoing process of providing assistance for police training?

One of you who raised the issue in your statement here the difference in who conducts the different police activities in countries that have the Napoleonic code and why this helps them reform their legal and judicial system. I would like any of your comments on the subject of legislative change for section 660 and why that change is appropriate.

#### POLICE TRAINING AND HUMAN RIGHTS

Mr. SHATTUCK. I can make a brief comment, Mr. Bereuter, on behalf of Counselor Wirth whose testimony you referred to and whom I am filling in for at this moment.

The origins of the section 660 of the Foreign Assistance Act, of course, reflect a very different world, in many respects. Section 660's concern about the use of the foreign assistance funds for police training in various contexts that reflects cold war realities at the time.

I think today the need for, as all three of us are saying, a strong administration of justice program that reflects all aspects of justice administration, from police work, training, all the way through the general law reform efforts that are underway in many parts of the world today is evident.

Certainly, the need to provide funds for police training in that context should be clear, and we ought to revisit section 660 and its general prohibition. I think the position that we would take is that there ought to be a presumption in the other direction, unless specifically prohibited, the funds should be available for police training with human rights safeguards built into all aspects of the funding process.

Mr. BEREUTER. What would you think those safeguards might be?

Mr. SHATTUCK. I think you would certainly take a look at the record of individual countries in terms of their human rights activities. We have a very strong record base to visit every year in the human rights reports that are produced by the Department of State. That in itself would provide a very clear indication of whether funds are likely to be used for the appropriate purposes within the framework of human rights protection.

Mr. BEREUTER. If there were highly negative reports in a specific country that addressed abuses in the police system or the police elements of the judicial system, where it was more directly related to the courts, in the Latin countries, for example, could it then be possible that we would require a special statement from the executive branch indicating to the Congress why they intended to provide police training nevertheless?

Mr. SHATTUCK. I think that would be the right framework to look at at that time, yes, sir.

Mr. BEREUTER. Mr. Michel.

Mr. MICHEL. I want to first of all say thank you, Mr. Bereuter, for your kind words. I thank you for the support you have shown for this program over the years. I remember you traveled at personal inconvenience to attend an ICITAP graduation ceremony and addressed the graduates in Spanish.

Mr. BEREUTER. I remember it well.

Mr. MICHEL. I think it is important to look at the section 660 prohibition in the context of the proposed reform of the foreign assistance legislation. In that regard, it is not only what is prohibited, a matter of removing a prohibition, but also the scope of what is authorized as foreign assistance.

Again, there is the distinction between the operational law enforcement cooperation, which is the day-to-day business of law enforcement agencies that deal internationally, and what is democracy-strengthening, institution-building, democracy-building foreign assistance within the scope of sustainable development.

I think it should fall within the scope of sustainable development if it is going to fall to USAID to receive the funds and be accountable for achieving results with those funds. So we look forward to working with the Congress on new foreign assistance legislation and addressing issues in that context.

One final point: At present, the administration of justice programs are subject to congressional notification. In that process, there usually has been some dialogue over programs that raise questions of human rights. I think it has been a healthy process in which we have been able to overcome issues and possible misunderstandings, and proceed with greater confidence that we are beginning something that we will be able to continue to work at over the long-term.

Mr. BEREUTER. Thank you.

Mr. Richard, what would Justice have to say about section 660?

Mr. RICHARD. I would comment along the lines of my colleagues. The current procedure presumes that there is a negative here. I suggest that police training could be very positive if conducted well, in terms of fostering a healthy respect and regard for human rights. That capability or potential has to be factored into the mix when you are considering whether to venture into an area where you believe that there are abusive situations.

The ICITAP programs I know consist in part of the special emphasis of ensuring the integrity of the police and investigative process and focusing on professional responsibility and methodologies—weeding out corruption and abuses.

So, given the realities that we encounter in these countries, on an operational basis, we frequently have to deal with them whether we like it or not, given our domestic law enforcement problems. I think we have to put all of these issues in the mix and in the equation before we decide to walk away from them completely.

I think there may be less draconian ways of getting their attention and turning around their human rights abuse records, if you will.

I would suggest that we look at the content of the police training and what it is we are attempting to accomplish before we put a ban on police training.

Mr. BEREUTER. Could you explain for the record the different divisions that the Napoleonic-code countries have in police, investigative, judicial organization?

Mr. RICHARD. The civil-code countries historically have had a process where the police, in essence, do the investigation only at the scene and then turn it over to another investigative judicial of-

ficial, an investigative magistrate. They are in quickly and out quickly, if you will.

The process tends frequently to be secondary with the burden being placed on an investigative magistrate, who frequently does not command control of the police investigative apparatus in the country and frequently has very little input and ability to police procedures and due process, as we know it.

A lot of these Napoleonic-code countries are moving toward the direction of an adversarial system, at least with respect to certain aspects of their system. I would not say they are adopting our adversarial system in total, but they are moving to what we would consider a more open process, more confrontationally adversarial, more with open proceedings, which more often than not is a positive trend in terms of fairness and human rights concerns.

Frequently, in many of these countries, in my experience, the military have investigative police functions, especially in the countryside, so that they are performing police functions in terms of investigating and responding to crimes which at times complicates the police training picture, if you will, in a given country.

#### ICITAP'S ROLE

Mr. BEREUTER. These differences in two very basically different systems have created confusion and frustration and accusations here in the Congress on a number of occasions, particularly as it relates to the concern for justice in some of the Central America countries.

ICITAP was created for specific police training tasks in Central America. The staff and the program involvement has expanded tremendously since that time.

I will ask any of you, is the structure of ICITAP appropriate for a worldwide police training role? If not, what would be changed and to whom does ICITAP report today? Who controls the involvement in the administration of justice programs?

Mr. RICHARD. Let me begin to respond to the question.

At the moment they are organizationally part of the Department of Justice and part of the Deputy Attorney General's Office. The head of ICITAP does at the present time report directly to the Deputy Attorney General. But nevertheless, the best way I can describe it is a hybrid organization, inasmuch as historically it has gotten funding through a pass-through from USAID, to State and then to Justice.

The targeted countries and its role have been largely controlled and set by USAID and the State Department. We at the Department of Justice, because of the growth of this entire international training movement or momentum that has been built over the years, have been engaged in an internal review of existing Department structures to determine how best to organize ourselves internally to respond to this development because there is a growing perception that we may be fragmented internally in terms of our own delivery of international training services.

We see this movement go way beyond police training. We think it has to take a more systemic approach and reach out to prosecutors, magistrates and judges if it is going to be comprehensive. We are considering expanding the role of ICITAP to encompass these

functions. We are considering creating additional organizations, that ICITAP would be part of, for a complete delivery system capability.

I know at this time the Attorney General has not made any decisions. There are about 50 slots at the moment within ICITAP. Most of them are FBI—current detailees or former FBI personnel—and presumably they are well-positioned to expand their reach beyond Latin America, if you will.

Mr. BEREUTER. Does anyone else want to respond to any of those questions?

Mr. MICHEL. I think ICITAP is a tremendous resource of the United States. Of course, I would refer to the Department of Justice on the internal organizational arrangement. The present arrangements are a bit cumbersome and were arrived at largely for historical reasons when this organization was being created. It is, perhaps, a good challenge for the interagency coordination mechanism to see if they can improve on that current structure.

Mr. BEREUTER. Thank you, Mr. Chairman.

Chairman HAMILTON [presiding]. Mr. Menendez.

#### JUDICIAL REFORM

Mr. MENENDEZ. Ambassador Michel, having read your testimony as well as listening to the testimony you gave, you talk about key lessons that have been learned. You note that judicial reform cannot be imposed from the outside.

With that caveat in mind and looking at USAID—you list on page 5 what the factors are for setting priorities, and there are five of them. I wonder whether these are weighted, particularly as it relates to the commitment of the countries specifically to promote judicial reform. Are these weighted?

I see the listing and wonder how it is reconciled with reference to your comment that judicial reform cannot come from the outside.

Mr. MICHEL. The other thing that the paragraph on page 4 says, though, is that working with the reformers and working with the local governmental and nongovernmental organizations in a country, you can see changes in the degree of political commitment. What you need to begin and what you need to continue or to expand may not necessarily be the same thing.

When we began this kind of effort, there really was a vicious circle in place in most countries. Where systems did not work very well there was a low level of public expectation and, therefore, no pressure on the policymakers to make the system work better.

Without the political leadership, the system did not work very well, and continued in that state of inertia. So overcoming that inertia involves a matter of dialogue, identifying reformers, beginning some small programs of communication and cooperation. You have to see how it develops. Certainly you would not make a major investment without being reasonably confident that the political will exists.

The programs in Colombia and Bolivia, that Mr. Richard referred to, are good programs, where we placed relatively small grants, working with national commissions and nongovernmental organizations for a number of years before instituting large programs, and instituting those large programs only when we were satisfied that

there was a level of political commitment that would sustain those programs and that these would be good investments.

There is no mathematical formula for rank ordering these things or how much weight each would get. You have to look at the circumstances of each country. You have to place a lot of reliance on the Ambassador, and the USAID mission and the Country Team present in the country.

The commitment of the local organizations and the local government is absolutely essential. That is a point well taken. That is one of the lessons we have learned.

Mr. MENENDEZ. How far do you go in the case of a government that has not indicated that they have a commitment to work with reformers and NGO's, in order to create the atmosphere for that commitment?

Mr. MICHEL. It is hard to generalize that without a specific case in mind, but I think that the programs in Colombia and in Bolivia were in the order of several hundred thousand dollars, at the most, in any given year, during the years before a major initiative was undertaken. When the major initiative was undertaken, I believe it was \$36 million in Colombia and a \$10 million program in Bolivia—so it is a substantial order of magnitude difference in what you feel you can do in working with other countries to strengthen the justice system, as a contribution to sustainable development.

It reflects the difference between a situation where we were examining the situation, looking at all of these factors and, in particular, the commitment, and being satisfied that the factors were present that would allow a successful program to be implemented. I think Mr. Richard is familiar with those two programs, and all indications are that they are moving ahead very well and achieving desired results.

Mr. RICHARD. If I may add more in response to an earlier question, again perhaps from my parochial perspective, I was a little concerned about a reference to moving out somewhat of Latin America in terms of our efforts there. We have over the years made significant progress there. We are beginning to see some significant changes, attitudinal changes and institutional changes. I think there are success stories we can point to.

My own personal fear, and my first reaction to the suggestion of moving a part of the efforts dramatically away from Latin America, is that these starts have been very promising, but I suspect they are very fragile. Unless we continue to support them on a day-to-day basis, I have seen instances where you move away prematurely and all you have invested goes down the tubes.

Mr. MENENDEZ. That is why I have concerns and am asking about commitments and weighting factors. While I understand the previous chairman's concerns, certainly they merit attention.

I think a lot of it, beyond the historical spending pattern, is also, I would assume, the development of those countries to a point where such a program would be effective in the first place, versus other countries that was not in that stage and hence the disparity in the expenditures. Is that fair to say that is part of the equation as to why there has been a disparity?

Mr. MICHEL. I think that is fair. As I mentioned, the history in different parts of the world as to when a democratic process begins

to take place, is important here. And it did begin in Latin America over a decade ago.

We have been working over that time with Latin America and, in many cases, with relatively small programs, comparable to the small programs that we are now starting out with in some other regions, and they have grown.

As I said in response to Mr. Lantos earlier, I do see some parallels in Africa, for example, where some countries now are at a stage of democratic development, where administration of justice programs do show greater promise for contributing to sustained development for those societies.

#### MEASURING SUCCESS IN AOJ PROGRAMS

Mr. MENENDEZ. How do we measure success in this program? What is it that we use as benchmarks?

Is it laws enacted, trials of people who commit human rights abuses or increased competition for judicial appointments. What are the benchmarks that we use?

We heard the Vice President earlier today talking about seeking performance outcomes. What do we use in this respect? I know it is not as easy.

Mr. MICHEL. All of the programs in the democracy area are very tough ones. In many areas, for example, in the health field, there are international standards that are well-known and followed. Everybody knows what infant mortality means. And you can compare. But would you measure a Congress by how many laws it passes? It is more difficult.

Mr. MENENDEZ. Some would measure by how many days we are not in session.

Mr. MICHEL. We have identified some standards of performance in our work with the countries in the region, working with organizations here, like the National Center for State Courts which has developed standards for trial courts, in the access, efficiency, accountability, independence, public trust and confidence.

I definitely feel one of the things you want to see is a judicial system develop its own measurement. We should not be collecting judicial statistics for other countries.

We ought to be able to work toward measures of performance that will cover these factors, that are of sufficient interest to the countries where we are working that there judicial systems will want to know those things and will compile the statistics. We can then have a more measurable result in our efforts to demonstrate what the consequences are to our programs.

We do want to measure results. We are getting there. We are not there yet, I have to admit. It is very hard to measure results in this area.

Mr. MENENDEZ. On that last point, it is just that there is so much concern. As I listen to my colleagues and see the voting that is taking place on the House floor, to justify every cent. There is a frenzy, and part of it is certainly legitimate, to establish certain standards by which we understand that the effectiveness of what we do.

I heard your answers to Mr. Bereuter on section 660. How do we safeguard against the criticism, and there will always be criticism,

to ensure that, for example, the criticism that we have, say, in the Defense Department on the School of the Americans, that what we do is professionalize people who become dictators and abuse human rights.

How do we do that within the context of the liberalization you are seeking in section 660? What are some of the safeguards? I heard Mr. Shattuck talking about looking at other countries' human rights records according to our own State Department's reports. Certainly that is a threshold to determine what countries are at what standards.

But then we have to go beyond that. I would like to hear if you have some ideas specifically as to how we seek the liberalization you want but also safeguard against those possibilities in which the programs end up in the misuse and violation of the peoples' rights.

Mr. SHATTUCK. If I could offer a couple of additional comments on that point, clearly every individual grant that would be administered under section 660 would be subject to very intense scrutiny and ongoing accountability under any revision that we would be talking about. It would not be sufficient to simply look at the record of a country on human rights and determine that it is appropriate or inappropriate to go ahead and make the grants.

Indeed, some of the countries with poor human rights records will be the countries to which we will want to make a grant to strengthen police training, improve human rights protection and help to create a climate for more effective police work, consistent with human rights. So I would say the grant administration process, as well as building in even more effective human rights aspects of the police training in general, should be our goals.

I would defer to Mr. Richard to answer at greater length, but we can always improve it and perhaps should improve it.

The main point I was making to Mr. Bereuter is that we are living in a different world than we were in 1974, when Congress prohibited all police training under section 660, precisely because there had been a misuse in the cold war of assistance for this purpose. It proved at times to have a dangerous effect on the human rights of the countries in question. The world we are living in now is no less dangerous, to be sure, but it is not one that I think is affected by the overriding potential abuse that affected thinking in 1974.

If we don't take advantage of these limited resources that are provided under section 660, to do better human rights training, as well as overall police training, we would be missing an opportunity to provide an essential link in the administration of justice, which is what this program is all about.

#### POLICE TRAINING

Mr. MICHEL. One thought, and that is that the police training that would be conducted under the Foreign Assistance Act and the training presently conducted under the Foreign Assistance Act, within the context of an administration of justice program, should be looked at as one component of a democracy-strengthening effort that is looking at all of the components of a system of justice.

I think one of the differences of the old programs of public safety, et cetera, that gave rise to the prohibition in 1974, was that that



was police training and nothing else. There was no context; it was just "train the police."

Here you are talking about strengthening democracy and improving the administration of justice within that and, in turn, within the administration of justice, the role of the police as a force that can contribute to strengthening democracy. You cannot let the police-training tail wag the dog of the administration of justice. The way that programs will be shaped is with an emphasis on democracy strengthening administration of justice. Police training is one component within that context.

Apart from it being a different world, it is a different programmatic structure as well, which I think will provide some reassurance.

Mr. RICHARD. If I may, just to continue on that thought. I think, in response to your question, you have to look at the cost content. It is police training, obviously, but what are the themes of this training?

It encompasses more than just how to collect forensic evidence and the fingerprints. It talks about a police organization that is designed to provide accountability, oversight, and command control over officials. The theme is what we take for granted as due process in dealing with police work, submission to judicial oversight and the role of the prosecutor and the judicial system in policing the police.

So these are themes that I would assume and I do believe are already being incorporated and inculcated in what is being delivered. So to walk away from the area of police training is, I suggest, frequently to shoot ourselves in the leg, to put it somewhat colloquially. It is in our interest, more often than not, to go in with these themes and press these things.

#### INTERAGENCY WORKING GROUP

Mr. BERMAN [presiding]. Chairman Hamilton had to go to vote. He asked me to sit in until he returns.

I apologize for not hearing the testimony. I had Budget Committee and Judiciary Committee at the same time. I saved the most important for last.

USIA has an active rule of law and judicial administration program. They are not here today. How do you people coordinate all your different programs with them?

Mr. SHATTUCK. The working group that we have been describing would involve USIA in a very intimate and regular basis. They are right now part of an interagency working group that deals specifically with Eastern Europe and their interest in participating on a more global basis is clear and their ability to contribute is equally clear.

I think the range of relatively loose coordination that goes on right now will be strengthened and improved by the creation of an interagency working group, which we have been describing during the course of the testimony. I think USIA will be very much a part of that.

Mr. MICHEL. USIA has been a part of other interagency groups that have existed on a regional basis from the beginning of the pro-

gram. They have developed an important capability in the administration of justice.

Mr. BERMAN. Do they go beyond Eastern Europe?

Mr. MICHEL. Yes. The programming that I am most familiar with is in Latin America where programs of exchange and group international visits that bring reformers and leading jurists from different countries together to travel in the United States and meet with counterparts have often been a part of the early steps of establishing a dialogue and a common understanding on which to build in working with other countries in this field.

I do think that the global dimension of coordination would not be complete without that. USIA, as a member of the Country Team, is very important in countries where our programs are carried out.

#### IMPROVING THE JUDICIAL SYSTEM

Mr. BERMAN. On a different subject—and I assume you have addressed this but I did not hear it—independent judiciaries and an institutionalized system for safeguarding liberty and individual rights. Is there a policy on how to utilize these programs to move countries into institutionalizing a independent judiciary and certain kinds of reserved rights for the people.

Mr. MICHEL. There is experience. The experience says you don't go in big. You don't find very often a country in the developing world to which we would turn for help in improving our justice system because theirs is so advanced. It is more likely that the justice system, in my experience, has been a neglected part of government, especially in countries that are making a transition from an authoritarian into a more democratic structure.

I described earlier, in response to another question, the vicious circle that exists within those countries where the system doesn't work very well and the public doesn't expect much of it so the public doesn't pressure their political leaders to make the system better, and they don't, and then the system doesn't work, et cetera.

We have found that the kinds of things I mentioned earlier, the USIA, international visitors and exchanges, small grants to non-governmental organizations doing research, beginning to work with reformers in government who are interested in assessing how the system works, are all steps that can be taken to see whether there is sufficient, you might call it critical mass, to warrant further efforts.

Oftentimes programs will continue at a relatively low level of funding over a period of several years before a judgment is made that the society with which you are working, that the government leaders, the professionals within it and nongovernmental organizations are sufficiently committed, that it is worthwhile to make that more substantial program investment in that country. That has been the experience.

I think one of the lessons we have learned is that you don't begin too big in a country where problems exist or you would not be involved.

Mr. BERMAN. Mr. Shattuck, do you have any thoughts on this?

Now I have to go vote. I will hear your comments through staff, but I would like to get them on the record.

## CRITERIA FOR DEMOCRACY ASSISTANCE

Mr. SHATTUCK. Let me offer a comment on a more general plain, with respect to the way in which countries are selected for programs of the kinds that we are describing here this morning and perhaps the way in which this interagency working group and coordination process will help sort all of this out.

We are, obviously, dealing with very scarce resources, as has been very evident throughout the hearing this morning, and the need to direct those resources in the most effective way, is one of the challenges that will be facing the interagency working group that will take up the whole subject of democratization.

The criteria that I think generally will be used in making selections for countries to be the subject of democracy assistance, and particularly in the area of administration of justice, are really four in nature, at least four general ones that need to be born in mind: One is the general strategic importance of a country to the United States, the importance of that country in a region, or other strategic reasons that the United States places importance on the particular relationship with a country.

Second, what are the prospects for democratization and the kind of susceptibility to the programming that we are talking about here, and which Ambassador Michel has been referring to, in terms of getting programs addressed to countries or going into countries which are in fact prepared to receive them in the administration of justice area, in particular.

Third, what is the degree of U.S. leverage and access to a particular country? What is the likelihood that in fact we can over time, have a significant impact because we have good access, and good leverage and good programming that can be put into effect?

And finally, what is the potential of a particular country having a demonstration effect in a region so that the impact on a particular region will be multiplied so that the administration of justice and democracy building will be generally favorable in the entire region.

These are four generally favorable criteria. Obviously, they don't answer all the questions, but I think they will help to guide the thinking of the interagency coordination process as it moves along.

## THE MOST SUCCESSFUL AOJ PROGRAM

Chairman HAMILTON [presiding]. We have had a lot of interruptions today. I apologize for that. Many things are happening in the Congress today, as you can appreciate. I will finish up with a few questions.

If I wanted to go to visit the most successful administration of justice program in the world today, where would I go?

Mr. MICHEL. I think Colombia, right now.

Chairman HAMILTON. That is the best one?

What is good about it?

Mr. MICHEL. What is good about it, starting from the Colombian side, the Colombians have felt so strong about this that it was a consensus issue in the last Presidential campaign with all candidates pledging themselves to judicial reform.

Chairman HAMILTON. There is strong political will to carry it out that? Is that it?

Mr. MICHEL. That was followed up by an amendment to the Colombian Constitution to improve the capacity of the institutions of Colombia to carry it out.

Chairman HAMILTON. When you say it is the most successful, what comes to your mind? Why is it the most successful?

Mr. MICHEL. I think it is the most successful in that the system a few years ago was in a state of disarray.

Chairman HAMILTON. The judicial system?

Mr. MICHEL. Yes, and then subjected to the overwhelming challenge from the narcotics traffickers. That system was really in trouble.

Chairman HAMILTON. How much money have we put into Colombia in the administration of justice program?

Mr. MICHEL. The current program is a \$36 million program. We have put several hundred thousand dollars a year into the Colombian preparatory program before that \$36 million.

Chairman HAMILTON. How much have we have spent on the administration of justice, just roughly?

Mr. MICHEL. I would say it is probably less than \$40 million.

Chairman HAMILTON. Over what period of time?

Mr. MICHEL. We began in 1986.

#### AREAS OF DIFFICULTIES WITH AOJ PROGRAMS

Chairman HAMILTON. If I were to visit the worst example in the world, where would that be, where we really have not made any progress at all?

Mr. MICHEL. We have had starts and fits and uneven progress. I hate to pick a loser. I think we have had some successes everywhere. We have had more success some places than others.

Chairman HAMILTON. No failures; is that it? Let's rephrase it a little bit. Where do you think we have had difficulties getting the program off the ground?

Mr. MICHEL. Well, Peru has been a country where there has been difficulty.

Chairman HAMILTON. Why the difficulty?

Mr. MICHEL. I think that, in part, is because there has not been that "coming together."

Chairman HAMILTON. A lack of political will?

Mr. MICHEL. I think this issue of commitment is one where, over the years, there have been reformers, there have been institutions that were very supportive, that wanted to do something. In a country that has been generally troubled with a lot of difficulties, it has not come together.

Chairman HAMILTON. For example, if you go in with an administration of justice program, is one of your concerns that the country has demonstrated a commitment to human rights?

Mr. MICHEL. Yes, sir.

Chairman HAMILTON. That is a tough judgment to make, of course. I don't know of any government leader who would say we are not committed to human rights. But you have to make judgments.

Your judgment does have to be that the country is committed to human rights before you would go into an administration of justice program; is that correct? Or is it that commitment a kind of a precondition?

Mr. MICHEL. I hate to be ironclad about preconditions because I think there is a risk of confusion of what "beginning" means. Sometimes "beginning" can mean very exploratory things, very modest efforts, in which part of our intention is, frankly, to help encourage a greater commitment, that would typically be a much more modest effort.

#### COUNTRIES WITH AN AOJ PROGRAM TODAY

Chairman HAMILTON. How many countries do we have an administration of justice program in today?

Mr. MICHEL. In Latin America, we have programs in virtually every country.

Chairman HAMILTON. Outside of Latin America?

Mr. MICHEL. In Eastern Europe, there are regional programs. NIS is a regional program. This would cover multiple countries.

I would have to supply that for the record. I know there is a growing list of African countries.

[The information appears in the appendix.]

#### ELIGIBILITY OF COUNTRIES FOR AOJ PROGRAMS

Chairman HAMILTON. I suppose most any country in the world will be eligible for it without exception?

Mr. SHATTUCK. I do think the criteria I was citing before would make it difficult for us to decide to use scarce resources to startup an administration of justice program in some countries. That doesn't mean they would not be eligible.

Certainly, some of the factors you were beginning to explore, about whether a country has the political will, notwithstanding a bad human rights record over a period time in the past, if it has that political will, and if it is relatively strategically important—

Chairman HAMILTON. Why strategically important? What is that anyway?

Mr. SHATTUCK. Well, I don't mean to define that.

Chairman HAMILTON. Why should the criteria for the administration of justice in a country be that the country is strategically important to us?

Mr. SHATTUCK. I am not defining strategic in the traditional sense, but I mean these countries in which the United States has a significant interest. Again, we are in an era of very scarce resources and one of the tough decisions that we are going to have to make, is what countries are going to receive these resources.

#### COORDINATION OF AOJ PROGRAMS

Chairman HAMILTON. I want to get clear in my mind the administration of this program. Who is in charge of this program? If I want to call up one person and get information, who do I call on a telephone?

Mr. SHATTUCK. Well, I think in the—in the very near future, Mr. Chairman, once the reorganization of the State Department is com-

pleted, the Interagency Working Group, which will be chaired by State and which will be under the leadership of the Under Secretary of State for Global Affairs—

Chairman HAMILTON. That is Mr. Wirth?

Mr. SHATTUCK. That is right. That is the place.

Chairman HAMILTON. So he is the man to call, as soon as the State Department authorization bill is passed; is that right? How many people does he have working or will he have working on administration of justice problems at State, full time?

Mr. SHATTUCK. Under his—well, under his general aegis, he will have all the State Department bureaus and his own bureaus, who are engaged in the work of the administration of justice.

Chairman HAMILTON. How many people?

Mr. SHATTUCK. I can't give you an actual number.

Chairman HAMILTON. Is he dealing with 5 people or is he dealing with 500 people who will be working full-time on administration?

Mr. SHATTUCK. There will be something like five people who will be working full-time on this, although again if you go to the regional bureaus and their involvement in these issues, you will find additional people.

Chairman HAMILTON. Which bureau will be in charge?

Mr. SHATTUCK. Well, I think under the Under Secretary for Global Affairs, there are at least two bureaus that have direct responsibility. One is the Bureau of Democracy, it is soon to be Bureau of Democracy, Human Rights and Labor, which I will be heading, and the second, which is the Bureau of International—well, it is actually the Bureau of International Narcotics Matters, which is—

#### FUNDING

Chairman HAMILTON. Now, where does the funding go in this program? Who gets the money?

Mr. SHATTUCK. Well, the funding is distributed to the agencies which have their own authorizations and appropriations. And they have—they will be coordinated by the State Department under a Presidential directive on democracy.

Chairman HAMILTON. Well, I want to know the figure for the total amount of money we are putting into the administration of justice program. How do I figure that out?

Mr. SHATTUCK. We will be able to supply you that information very soon, I would hope.

Chairman HAMILTON. Can you give it to me now?

Mr. SHATTUCK. I can't give it to you at the moment. Mr. Michel could probably give you some of it now.

Mr. MICHEL. I can give you some aid numbers, but not the State Department Narcotics Bureau, not USIA, not the totality of resources.

Chairman HAMILTON. So the check goes to a lot of different places, is that what you are telling me? I mean, USAID has some of the money, USIA has some of the money, Department of Justice has some of the money, State has some of the money. Under the current arrangement, I am trying to understand it. Who has got most of the money?

Mr. SHATTUCK. I think probably USAID has most of the money.

Chairman HAMILTON. How much money have you got in administration of justice, Mr. Michel?

Mr. MICHEL. It runs approximately \$60 million a year, I believe that will increase with the New Independent States program that is just starting.

Chairman HAMILTON. How many people do you have working full-time on administration of justice in USAID?

Mr. MICHEL. I can't give you a number for the agency as a whole. I know that overseas and in Washington in the Latin America bureau, where I came from, we had about 50 working on democracy, including administration of justice.

Chairman HAMILTON. OK. Again, I don't expect you to give me precise numbers here, but I am just trying to get some idea of the magnitude of it. Would you have 100 people in USAID working full-time on administration of justice programs?

Mr. MICHEL. Well, administration of justice, no. I think what we would have is people who are specializing in democratic development, in which administration of justice will take up some of their time. They might be working with electoral tribunals or grassroots nongovernmental organizations, or legislative strengthening or decentralization or other aspects of democratic institutions, in addition to the administration of justice. We don't have many who do nothing but—

Chairman HAMILTON. The more you tell me they are doing, the more nervous I get up here about this program. OK. How about—now, you contract out a lot, I suppose, in this program, USAID does a lot of contracting out?

Mr. MICHEL. USAID does work with host country institutions, we work with regional organizations, and we work with universities, with nongovernmental organizations, the National Center for State Courts.

Chairman HAMILTON. Now, is the Justice Department going to take orders from the new Secretary over here in the Department of State on this program, Mr. Richard?

Mr. RICHARD. Well, we are going to participate, hopefully, as a full member in the consultative process and this coordination process. I am sure that to the extent that we don't agree with a particular decision made by the body, we always in a bureaucratic system have the ability to escalate that if the issue warrants it, but I would hope—

Chairman HAMILTON. Where do you escalate it?

Mr. RICHARD. Where?

Chairman HAMILTON. Where do you escalate it?

Mr. RICHARD. You have the Secretary, I mean, if it was that significant an issue. I would suggest to you, based on the current state of affairs, that while—I mean that this organizational change should go a long way to dealing with a lot of current problems and ambiguities with respect to chain of command and authority levels and what have you.

Chairman HAMILTON. When is this change going to be put into effect? As soon as the bill is passed?

Mr. SHATTUCK. As soon as the bill is passed and the Presidential review directive number 26 on democracy policy is approved by the President.

Chairman HAMILTON. So Mr. Wirth who then becomes the Under Secretary sees something you are doing in the ICITAP—is that the way you pronounce it—ICITAP program that he doesn't like, he calls you up and says change it and you change it? Is that the way it is going to work?

Mr. RICHARD. I don't anticipate it will be as arbitrary as you suggest. I think it would be more of a question—

Chairman HAMILTON. We know Mr. Wirth would not be arbitrary, we understand that. But if he wants a change in the program, does he have the authority to call up Mr. Richard or Mr. Whoever at the Justice Department and say I want this changed?

Mr. RICHARD. Well, I imagine he certainly could indicate that, and if the—

Chairman HAMILTON. The question is not indicating, it says can he get it changed?

Mr. RICHARD. My bureaucratic sense says no; in that sense he could not order a component within Justice to do something. However, I could imagine him calling up the Deputy Attorney General and telling him "This in my judgment, is what has to be done, why it has to be done."

Chairman HAMILTON. This is why we have to reinvent government. These lines of authority are scary that you have spelled out to me. I just don't think these programs are going to work unless you have clear lines of authority.

Now, I may be wrong about that, but—and I know you have got a difficult situation. None of you created it, we created it, a lot of other people created it. Maybe the changes you are going to make will bring this about, but, you know, my general impression with the bureaucracy is somebody's got to have the power to crack the whip and crack heads, figuratively speaking.

Mr. MICHEL. Mr. Chairman, I guess one of the principles of reinventing government, though, is that operations not be operations centralized and that some policy—

Chairman HAMILTON. You have sure got some decentralized here, I tell you that. They are decentralized over three big groups, State Department, USAID, and Justice.

Mr. MICHEL. Well, and USIA we talked about earlier.

Chairman HAMILTON. And USIA. Well, OK, we ought to give you the benefit of the doubt, and we will want to come back to you at some point after you have had an opportunity to put this together and see if you can get the kind of coordination and effectiveness that you seek, I know, and we seek here as well on it.

Mr. SHATTUCK. Mr. Chairman, if I could just add one word to that subject, so that the record is clear, what this coordinating activity will be. And I think the will to create the kind of coordination that you are suggesting is needed, is certainly there. It will be a coordination of policy in this area, and I think that the danger would be if the coordination got into details of management.

There are certainly levels of very strong coordination within each mission, within each embassy, on the actual implementation of programs. There is probably no better place for programs to be coordinated than at the embassy level, where all the actors are working very closely under the direction of the Ambassador, who of course



is the representative of the Secretary of State and the United States.

Chairman HAMILTON. What kind of coordination do you have with the Defense Department under the Judge Advocate General program, where they have efforts under the IMET program generally to expand?

Mr. SHATTUCK. Well, they are going to be a very important part of the interagency working group.

Chairman HAMILTON. They will be sitting in that interagency working group?

Mr. SHATTUCK. Very definitely.

Chairman HAMILTON. Who is responsible over at the Defense Department for that? Do you know at this point?

Mr. SHATTUCK. The position of Assistant Secretary for Democracy and Peacekeeping, which does not yet have a confirmed—

Chairman HAMILTON. That is Mr. Halperin?

Mr. SHATTUCK. That is right, but he has not been confirmed—

Chairman HAMILTON. If he is confirmed, then he becomes the point man for Defense on the Judge Advocate General programs; is that correct?

Mr. SHATTUCK. That is my understanding.

#### FUNDING AND COORDINATION OF POLICE TRAINING

Chairman HAMILTON. OK. How many agencies today provide police training?

Mr. RICHARD. Mr. Chairman, I am not sure I can, off the top of my head, give you a precise answer, because law enforcement in general provides a whole host of training in specific aspects, specific programs, to their counterparts in various parts of the world.

If you include that within the umbrella of police training, if you will, then there will be, I would suggest, many, many agencies that engage in such training efforts. Obviously the most formalistic group that we have, I think, by and large, is ICITAP, that performs a more systemic training effort around the world.

Chairman HAMILTON. Police training would be a very important part of administration of justice, would it not?

Mr. RICHARD. Certainly.

Chairman HAMILTON. And your Under Secretary once appointed would have responsibility for all police training of—no matter conducted by what agency; is that right?

Mr. SHATTUCK. Well, it would be under the direction of the President in the democracy policy Presidential review. If it involved democracy policy issues, their coordination responsibility would lie with the Under Secretary for Global Affairs. There may well be other programs that don't fit within that.

Chairman HAMILTON. How much money does Justice get for administration of justice programs, do you know?

Mr. RICHARD. I am not sure we have any specific line item for administration of justice. ICITAP gets its moneys as I mentioned earlier from a pass-through from USAID to State to us. So I am not sure we have any component that has precisely AOJ money coming directly for us.

Chairman HAMILTON. So if I am working for ICITAP, I am an employee of USAID?

Mr. RICHARD. Department of Justice.

Chairman HAMILTON. Where do I get my paycheck?

Mr. RICHARD. Department of Justice.

Chairman HAMILTON. Where do you—where does the Department of Justice get the money, from USAID?

Mr. RICHARD. As I understand mechanically, it goes from USAID to State to Justice.

Chairman HAMILTON. USAID to State to Justice?

Mr. RICHARD. That is correct.

Chairman HAMILTON. Now, why does State get into the act there? I mean, do you have oversight responsibility of USAID funds here, do you?

Mr. SHATTUCK. I am not sure that I have a good answer to this question.

Mr. MICHEL. This is a unique arrangement that reflected the Department of State's interest in this element of administration of justice and police training and, frankly, at the time it was created a discomfort within USAID in dealing with police training because of the history of USAID and police training. And since the State Department had the policy lead on it, the flow of funds was set up through the State Department.

Chairman HAMILTON. When we talk about the ICITAP team, how many people are we talking about?

Mr. RICHARD. We have 50 professionals, some of them are detailees from the FBI, some are direct employees of ICITAP.

Chairman HAMILTON. And ICITAP reports to whom?

Mr. RICHARD. Well, they are part of the Deputy Attorney General's Office, but they are a hybrid in the sense that their missions are frequently outlined by USAID, their target destination and country that they will be participating in are determined largely through State and USAID processes.

Chairman HAMILTON. Is there a head person for ICITAP?

Mr. RICHARD. Yes.

Chairman HAMILTON. Who is that?

Mr. RICHARD. Mr. Kriskovich.

Chairman HAMILTON. He is a Justice Department employee?

Mr. RICHARD. That is right, he is an FBI employee.

Chairman HAMILTON. He reports to who?

Mr. RICHARD. To the Deputy Attorney General.

Chairman HAMILTON. And the Deputy Attorney General on this program reports to?

Mr. RICHARD. To the Attorney General.

Chairman HAMILTON. How does State and USAID get into it?

Mr. RICHARD. Well, as I say, it is a hybrid in the sense that while the training programs are designed by ICITAP and submitted to USAID and State for concurrence, the selection of target countries and the like are largely determined by USAID and State.

Chairman HAMILTON. Well, I tell you, my impression here is this needs a lot of work. And I think that what we would like to do here is hear from you again after that State Department authorization bill is passed and it gives you an opportunity to do some restructuring and rethinking of the lines of authority.

And I will ask my staff here to be in touch with appropriate staff there to see when we should have a repeat performance here as a

kind of a follow-up. To some extent, I will be guided by you on that, when you are ready to come up for it, but we don't want it to lag too long.

Our view, my view is that this is a very important program and I know a lot of good work has been done in it and you are to be commended for that, but I think there are sufficient questions about structure and organization and financing that really need hard review. And I think you generally have that point of view yourselves as you have expressed a few times this morning.

So I want to thank you for your appearances today and we will continue this at a later date.

Mr. MICHEL. Thank you, Mr. Chairman.

Chairman HAMILTON. Thank you very much. We stand adjourned.

[Whereupon, at 12:24 p.m., the committee was adjourned.]



## APPENDIX

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### PREPARED STATEMENT OF TIMOTHY E. WIRTH, COUNSELOR OF THE DEPARTMENT OF STATE

Mr. Chairman and members of the committee:

It is an honor to appear before this committee to discuss administration of justice programs and explain what the Clinton administration is trying to achieve with this foreign assistance. I would like at the outset to commend the committee for recognizing the importance of this issue by organizing this hearing and signalling support for these initiatives.

After a brief review of our administration of justice programs (AOJ), I want to discuss the questions of State's leadership and how we plan to work with other interested agencies, the programs which need to be considered as part of any administration of justice effort, the important issue of police training, and the balancing of objectives in our law enforcement training programs. I will conclude with some suggestions about how the Congress can help us establish the strongest possible programs.

Mr. Chairman, I believe that this discussion should address the issues you raised in your letter. At the end I will be happy to take your questions.

Administration of justice programs are not new, but we are looking at them now in a different, more comprehensive manner. Let me offer some background, as democratic change took hold around the world in the 1980's, it became apparent that the judicial and law enforcement structures in many countries were not adequate to support the new, more representative governments. The systems were often antiquated, dating back to more repressive or colonial times, badly managed and mired in red tape and corruption.

Efforts to improve the rule of law began with programs in El Salvador in 1983 and the rest of Central America in 1984. They were subsequently extended to other parts of South America, particularly the Andean drug producing countries, the countries of Eastern Europe and the former Soviet Union, and selected other states in Africa, the Middle East, and East Asia.

When President Clinton came into office, administration of justice programs generally fell into three categories:

- The largest programs were focused on Latin America. Where AID has committed approximately \$169 million in the past 10 years toward strengthening the administration of justice in every country of the region except Cuba and Suriname. The programs of the Deputy Attorney General's International Criminal Investigative Training Assistance Program, better known as ICITAP, operate under this initiative.
- In Eastern Europe and the former Soviet Union, specially designated assistance offices allocated about \$2 million between 1990 and 1993 for judicial reform. The largest recipient of these funds was the American Bar Association, which received about \$1 million to fund its Central and Eastern European Law Initiative (CEELI). Several offices in the State Department, including the offices of the coordinator for U.S. assistance to the New Independent States, the coordinator for East European Assistance, and the Bureau of Human Rights and Humanitarian Affairs, share responsibilities with AID and USIA for managing these programs.
- In the rest of the world the State Department, AID, and USIA address rule of law issues through several small programs, valued at about \$2 million between 1990 and 1993. The most extensive are in Africa where the Interagency Democracy and Human Rights Committee administers programs, consisting mostly of technical assistance under section 116(e) of the Foreign Assistance Act. Most programs in the Middle East and East Asia are limited to occasional exchanges,

although the U.S. Embassy in Egypt, using part of its Economic Support Fund (ESF), has been running at \$1 million Rule of Law Program.

While these programs responded to important shortcomings, raised the consciousness about rule of law, and provided vital inputs to the political development process, they vary because of differences in origin, operating style, guidelines, and objectives.

One of the Clinton administration's first acts of the State Department was to propose the new position of Under Secretary for Global Affairs "to be able to deal more effectively with the new issues of critical importance to our Nation's foreign policy," such as strengthening democracy and fighting international crime. The reorganization and staffing necessary to manage these tasks is underway.

At the same time, as Jim Michel will be able to describe, AID reviewed its past operations and put together its own reorganization program to meet the challenges of the post-cold war world.

## II

Administration of justice programs are an important part of the U.S. effort to promote democratic change. Democratization is more than just free elections. At its core a democratic state is ruled by law, not power or personalities. Democratic states are more likely to promote laws that protect individual rights, and respect those laws. Such systems succeed only when a strong, independent judiciary serves as the arbiter of the law. That is what we mean by a system operating under the rule of law.

A central tenet of the rule of law is that government officials are held accountable for their actions by an independent judicial authority. Societies lacking an independent judiciary often are characterized by human rights abuses and security forces acting with impunity. Building a judiciary that is strong enough and independent enough to ensure that government officials and security forces operate within the law is a long-term AOJ objective.

From legislative reform to judicial training, law enforcement training to prison reform, a constant goal of our programs is to assist in establishing the rule of law. Our AOJ programs should provide emerging democracies with the tools and training necessary to draft laws, create democratic institutions to enforce those laws, and build strong, independent judicial systems. Every AOJ program should be designed and implemented with the understanding that it is part of our overall efforts to promote democratic change.

## III

Terms like "administration of justice" and "rule of law" describe broad areas of potential activity. To make them meaningful in a particular context, we must identify a specific objective or activity, whether it is criminal or civil. While the AOJ program to date has focussed largely on criminal issues, there is great need for assistance on the civil side as well—providing the means for social and economic development, including trade and investment.

In any particular area, law reform—the amendment of existing or preparation of new laws and regulations—will probably be necessary, although we do not support it as an end in itself. In many countries, there is little relationship between the laws on the book and actual practices. By far the greater challenge is to assist in the development of institutional structures that will permit effective implementation of whatever laws are enacted. That is where our principal focus should be placed.

On the criminal side, where we have the most experience and the failings of institutions abroad have the most immediate impact on the United States, we generally see the administration of justice program as having four principal areas of activity. Going from start to conclusion of the criminal justice process, they focus on police, prosecutors, courts and prisons.

—*Investigative Techniques.*—These aim at improving techniques by those administering justice at the community level—police officers in the streets and at headquarters. Programs focus on human rights training, technical skills, and administrative procedures. ICITAP and the ATA program have been active at this level. This type of assistance has been politically sensitive in the past and is the focus of section 660 of the FAA, prohibiting foreign assistance to law enforcement agencies.

—*Prosecution/Defense Programs.*—These aim to improve the way cases are presented to the courts for both prosecution and defense. The Department of Justice is especially effective in helping to implement these programs.

—*Adjudication Programs.*—Their objective is to improve judicial performance and court administration. In developing these programs, it is important to recognize

possible contributions from the judicial branch and judicial branch associations at the Federal, State and local level. These programs also make available equipment needed to improve court administration.

—*Prison Improvement/Reform.*—These programs range from improving prison conditions and prison administration to modifying the system of incarceration in certain countries.

If the U.S. is to provide administration of justice support, it must determine the appropriate level of intervention. Each country is different. The selection of countries and types of assistance depend on many factors. We will work closely with AID and justice, foreign governments, NGO's, our embassies, and regional bureaus, to develop criteria and evaluate need. We will also consult with Congress during the decisionmaking process.

#### IV

Police training programs present a special case which has been mired in controversy and legislative restrictions. I believe the time has come to go beyond the constraints of the past. We hope the Congress will further liberalize section 660 of the FAA.

In the 1960's and early 1970's, police training programs were often aimed at supporting official efforts to prevent Communist subversion. When some governments abused this training and focused repressive tactics on their own citizens, Congress called for a halt to U.S. assistance by passing section 660 of the FAA in 1974. The statute originally contained an exception for some law enforcement assistance. In the 1980's, further waivers were granted for antiterrorism and narcotics assistance, the AOJ program in Latin America, and some country-specific exceptions. The AOJ waiver was extended last year to include Eastern Europe and the former Soviet Union. The statutory history suggests Congress recognizes that our police training programs today are designed not to support the status quo, but to build democratic institutions.

ICITAP plays an important role in police and investigative training programs in Latin America. The GAO has recommended that the Secretary of State "utilize ICITAP to help carry out the law enforcement assistance programs" in Eastern Europe. ICITAP has important strengths that could be applied in other parts of the world, but it was not created to operate outside the region, nor does it conduct all police training in Latin America. Other Federal agencies such as the U.S. Customs Service of Treasury, DEA and the Anti-Terrorism Assistance (ATA) Program are involved in police training. The most effective programs will continue to be those that match agency expertise with needs.

Well-trained police are an important component of a judicial system that ensures the rule of law in a democratic society and, at the same time, respects the rights of individuals. A well-trained police force, however, without a strong, independent judiciary is a potential liability to democracy; such a force could easily become the tool of a repressive regime. It is important to ensure that police training programs are implemented within the framework of broader judicial reform efforts.

While it might be desirable to integrate all police training efforts into administration of justice programs, this is not practical in every case. There is a need for such agencies as the FBI and DEA and programs like the ATA to provide support in countries which need broader democratic support programs, but require assistance because of specific criminal, narcotic, or terrorist threats. Within those categories of countries where there are broad administration of justice programs, our efforts will be integrated as fully as possible.

Coordination of police training has not been problem free. It has been complicated by the number of agencies involved, the diversity of programs, and the absence of designated coordinating authority to any single agency.

The State Department's Bureau of International Narcotics Matters (INM) is able to coordinate the separate narcotics training programs administered by DEA, customs, and the Coast Guard because it controls the training funds. The coordinator for counter-terrorism (SCT) coordinates the broad range of inter-agency anti-terrorism assistance efforts as well as the State Department's ATA program. The Bureau of Human Rights and Humanitarian Affairs is preparing a plan to coordinate USG democracy assistance under State's global affairs portfolio. Within the U.S., coordination will focus on policy direction and priorities. Abroad, we look to each ambassador and country team to offer program guidance and implement all U.S. administration of justice training, including police training.

## V

Better judicial systems not only strengthen the democratic system of government, but also enable them to better deal with narcotics traffickers, terrorists, and other dangerous elements in society. In Colombia, for example, traffickers and terrorists exploit the shortcomings of the legal system to keep themselves out of jail and their operations flourishing. The \$36 million administration of justice program in Colombia is aimed at strengthening the key governmental units that must work together to enforce criminal laws.

The Justice Department has operational concerns that must be integrated with this effort. One of the goals of the new coordinating and policymaking structure is to ensure that justice has an opportunity to weigh in at the initial phase with law enforcement concerns and special technical expertise when an integrated assistance package is being created.

## VI

Is the State Department "ready to assume full responsibility for coordinating and overseeing the AOJ program and other legal and judicial reform programs?" We are beginning to assume this responsibility now and will be fully operational once the Global Affairs Under Secretary position, the new Bureau of Democracy, Human Rights and Labor, and the Bureau of Narcotics, Terrorism and Crime are approved by Congress.

We will not operate in a vacuum. Consultation is the key to success when many interests are involved. Within the State Department there are other important offices that continue to play a central role in molding programs and overseeing results in their areas. Among them are the coordinator for the New Independent States, the coordinator on East European Assistance, the regional assistant secretaries, and our ambassadors.

We will also work closely with AID and the Justice Department to develop programs that best serve American interests. Based on these broad consultations, not unlike our consultations on other foreign policy issues, the Department of State will set the overall policy direction and make broad strategic decisions about policy implementation. The Attorney General and the Administrator of AID will provide policy input and deliver the programs in their respective areas of responsibility.

## VII

I was pleased, Mr. Chairman, that you asked what legislative changes the Department would seek to coordinate its administration of justice programs more effectively. I have three general areas where we would welcome congressional assistance.

1. *Support for funding flexibility.*—Effective legal reform programs require integration of our foreign policy interests, regional and country needs, and our capabilities to meet these needs. This process obviously cannot occur without congressional authorization and participation. We do not seek additional funding for legal reform, but we do hope for greater discretion in how to spend the funds.

2. *Modification of section 660.*—Police training programs are limited by section 660 of the Foreign Assistance Act. Over time section 660 has been the subject of numerous exceptions on a geographic or subject matter basis. The Department hopes that Congress would review section 660, and consider changing the presumption so that police training is permitted except where legislatively prohibited.

3. *Support for our reorganization plans.*—Finally, the Department asks Congress to approve State and AID reorganization plans as quickly as possible. Creation of the new Under Secretary for Global Affairs, the Bureau of Democracy, Human Rights and Labor and the Bureau of Narcotics, Terrorism and Crime will facilitate the Department's coordination and direction of AOJ assistance.

I appreciate the opportunity to share my views with the members of this committee today. It is vital that the executive and legislative branches work closely to establish the best possible administration of justice programs. I look forward to working with you.



Opening Statement of  
 Congressman Benjamin Gilman  
 on the Administration of Justice

Mr. Chairman:

The "Rule of Law" is often taken for granted; yet it is a concept essential to the functioning of democratic societies. For many nations, however, the rule of law remains only an abstraction. In the 1980s, the Executive Branch and Congress worked to develop and implement programs to assist nations undergoing the transition to democracy. Today, more than \$100 million is being spent on programs for police professionalization, the Administration of Justice, and the Rule of Law.

This assistance covers the spectrum from the basics of law-making, the gathering of evidence, and the arraigning of defendants, to providing for a professional prosecutor and public defender corps, the security of judicial officials, and to the final judicial steps of sentencing and incarceration. These programs seek to be comprehensive, and are often implemented in societies undergoing difficult transitions from war to peace, or from closed to open, democratic political systems.

I have strongly supported these efforts, and encourage the Administration to continue, and expand, administration of justice and rule of law programs. In the post-Cold War environment, it is in this area that we can perhaps make our greatest contribution. However, we must be wise in how we expand, so that our enthusiasm does not exceed our ability to assist or the political will of the host nations.

One area where these programs continue to have a significant impact is in drug-producing countries. As we continue our international counternarcotics efforts, defeating the traffickers must include the strengthening of judicial systems. In many of these nations, drug traffickers have succeeded in either subverting the judiciary's effectiveness or have threatened judicial officials to the extent that no one is willing, literally, to put their life on the line for a decision that will not put these criminals away. The reform and strengthening of judicial systems is essential to the success of our narcotics control efforts.

I have two further specific comments. First, having been a practicing lawyer, I am a strong supporter of the Anglo-American

justice system and I have a strong appreciation for our common law tradition. However, in many of the nations where administration of justice or rule of law programs are operating, those nations rely on a code system. While our system has many strengths, so do code systems. Our programs must be sensitive to the existing legal structure. To the extent these nations want to adopt the adversarial system, we should support that; but our programs should not be a guise under which we seek to impose our system in the name of "judicial reform."

Second, the role of the Department of Defense: At first, many will not think of the United States military as an important institution in developing a societal rule of law ethic. However, given the history of some of these nations, the military is often an area that needs as much judicial institution-building as do the civilian structures. Under the "expanded international military education and training program," U.S. military personnel have presented seminars to their foreign counterparts on respect for human rights and civilian authority. There have also been programs to assist foreign militaries in adopting or revising a uniform code of military justice. As we support the institutionalization of democratic institutions, we cannot overlook the role of the military in a democratic society.

Mr. Chairman, I commend you for holding this hearing, and I look forward to hearing from the Administration on its plans for these important programs.

TESTIMONY OF AMBASSADOR JAMES H. MICHEL  
DEPUTY ADMINISTRATOR, ACTING  
AGENCY FOR INTERNATIONAL DEVELOPMENT  
BEFORE THE HOUSE FOREIGN AFFAIRS COMMITTEE  
ON THE ADMINISTRATION OF JUSTICE

September 14, 1993

Mr. Chairman, Members of the Committee, on behalf of Administrator Atwood, it is a pleasure to appear before this Committee today to discuss administration of justice programs. In view of the new opportunities and needs suggested by developments in the post-cold war era, this hearing is both timely and appropriate.

A.I.D. has been the principal donor supporting programs to improve the administration of justice over the past ten years. We now have active programs in every region. We plan to stay engaged in this critical area of democratic development in the future. In this testimony, I will highlight lessons that we have learned and briefly discuss how we will incorporate them into future A.I.D. programs. Specifically, my testimony will examine the following subjects:

- o the A.I.D. administration of justice program -- approach, directions and accomplishments;
- o how resources are allocated to democracy and administration of justice programs;
- o how we see the issues surrounding police training; and
- o areas where we would like to work with this Committee and the Congress to effect legislative changes.

Let me emphasize at the outset that A.I.D. recognizes the distinct skills and capacities that different U.S. Government agencies bring to the task of promoting more effective judicial systems. Each agency also may have specific interests and priorities. This makes close interagency coordination essential. A.I.D. welcomes the undertaking by the Administration, described by Counselor Wirth, to strengthen and improve the interagency coordination process.

#### I. SUPPORTING SUSTAINABLE DEVELOPMENT AND DEMOCRACY

As Administrator Atwood has outlined, A.I.D.'s fundamental mission in the post-cold war era is to promote sustainable development. This requires the establishment of democratic

institutions, a vibrant civil society, and a relationship between state and society that encourages pluralism, fosters participation, maintains accountability and facilitates the peaceful resolution of conflict. Strengthening democracy and promoting economic growth and social progress are mutually reinforcing goals which, together, comprise sustainable development.

To realize these goals, we must stimulate the skills and strengthen the capacities of people living in the developing world. We must help them to build enduring institutions that protect the rights of the citizenry and allow them to pursue their individual aspirations. In establishing the promotion of democratic institutions as one of A.I.D.'s four key areas of program involvement, we are fulfilling one of the central foreign policy objectives of the Clinton Administration.

The failure of societies to develop effective political institutions creates strategic threats for U.S. interests. These deficiencies manifest themselves in civil wars, ethnic, tribal and religious conflict, the collapse of law and order, terrorism, irreversible environmental degradation and uncontrolled migration. In an increasingly interdependent world, each of these problems challenge the well being of U.S. citizens.

In the context of sustainable development, strong and independent justice sector institutions encourage adherence to and respect for human rights. They provide mechanisms to ensure the fair and timely resolution of civil disputes and criminal charges.

In many developing countries, these attributes are absent. Judicial systems lack the resources and wherewithal to provide a neutral and timely forum for the resolution of controversies, access to courts is limited and respect for legal norms is not well developed. In some countries, justice sector institutions not only fail to check government corruption, but are themselves dominated by graft and intimidation.

Let me review A.I.D.'s experience with administration of justice programs.

In Latin America and the Caribbean, a second generation of programs is building on the successes and failures of past efforts. An initial emphasis on criminal justice has gradually expanded to include civil and commercial areas. Ongoing initiatives include law revision and modernization; professional training and exchanges; human rights training; public education campaigns and support for private legal institutions; anti-corruption campaigns; introduction of alternative dispute resolution; improvements in physical infrastructure; and development of modern management systems.

The accomplishments of this program are notable. These range from the establishment of systems for merit selection in judicial appointments; movement toward oral adversarial criminal proceedings resulting in greater openness and access; updated civil procedures to resolve commercial disputes; greater attention to the right to public defense; and an enhanced role for management and administrative staff in the operation of the judicial sector.

In Central and Eastern Europe, extensive efforts have been directed at developing the legal framework for democratic institutions including assistance in drafting and reviewing new constitutions and legislation.

In Africa, nongovernmental organizations, using 116 (e) funds, focus on access to justice and legal assistance programs for the poor and under-represented. A new emphasis is being directed to promoting the legal underpinnings of economic reform.

In the Near East, attention is devoted to the promotion of human rights and human rights education. A new program in Egypt provides direct assistance to the judiciary in the area of legal and civil rights.

In the former Soviet Union, a major new effort is underway to support creative programs in commercial law, judicial reform and legal institution building. Local reform initiatives are being supported such as the program to support the introduction of jury trials in Russia.

In Asia, assistance is channeled primarily through the Asia Foundation to local nongovernmental organizations that provide para-legal training and other forms of legal assistance for the disadvantaged. In addition, efforts to develop alternative dispute resolution mechanisms are underway.

## II. LESSONS LEARNED

A.I.D. has learned many lessons from our experiences implementing judicial sector programs during the past decade, particularly in Latin America. Admittedly, not all of our programs were outright successes. In some cases, we encountered situations where the program assumed greater political will than was immediately present. In other cases, we committed significant resources before we fully understood the nature of the problem.

Overall, though, A.I.D. efforts in implementing judicial sector programs have served as the catalyst for major legal reform efforts throughout the western hemisphere. We have succeeded in raising the level of consciousness about justice

systems in the region, attracting talent to the solution of the problems and providing relevant technical assistance and training. I have provided for the record an inventory of reforms in the Latin America program.

Let me share some of the key lessons that emerge from our internal evaluations because they will influence the design and implementation of future programs.

First, programs designed to strengthen the administration of justice require a long-term view and commitment. Change is gradual and sustained improvement is continuous. Providing expensive technological improvements -- bigger buildings and better equipment -- is not sufficient. External support for gradual, long-term improvement must be somewhat insulated from short-term issues.

Second, judicial reform cannot be imposed from outside. Political commitment from the highest level of government officials is an important gauge during program implementation. If this commitment is not forthcoming or the government is an unwilling partner we must consider whether support should be maintained. Nonetheless, we recognize that political support often is a gradual process and can be encouraged. Pressure can and should come from sources outside the government such as universities, think tanks, bar associations, and influential individuals. Without the support of outside groups, reformers within the justice sector may lack sufficient leverage to overcome inherent conservatism and inertia or the power to ~~the~~ bargain for additional resources from executive and legislative branches.

Third, concentration on the "supply" side should not override concerns for programs that stimulate "demand" for and access to justice. Nongovernmental organizations (NGOs) play a critical role in generating this local demand for judicial reform. They have a unique capacity to analyze and advocate specific reform initiatives. They also provide the key link in providing improved access for those who otherwise would not utilize the formal judicial system.

Fourth, the effectiveness of programs is enhanced when they are integrated into an overall U.S. Government effort, and also when they operate in a collaborative fashion with other donor activities.

### III. PROGRAMMING AID RESOURCES

Foreign assistance resources are increasingly limited at the same time that we face many new demands in Eastern Europe, the states of the former Soviet Union, and countries emerging from

prolonged turmoil and crisis, such as Cambodia, Haiti and Angola.

Each agency represented here today has a different mission, and therefore will have different priorities. But we also have complementary strengths, and need to build on them to achieve the common Administration objective of supporting the emergence of enduring democratic systems. A.I.D.'s strengths include our field missions, our close cooperative relationship with the State Department and our technical expertise in developing and implementing programs abroad, often under challenging conditions and in circumstances significantly different than one finds in the United States.

In formulating country-specific development strategies, experience shows that a strong grasp of local conditions is essential. There is no single strategy that will be equally effective in all countries, or responsive to all local needs and opportunities.

The Country Team, chaired by the Ambassador and with representatives of various U.S. Government agencies including A.I.D., offers the principal forum for formulating and reviewing development strategies. In this context, AOJ programs are fully integrated into an overall country strategy. These strategies and the specific form of A.I.D. assistance are then reviewed carefully in Washington by A.I.D., with the participation of other concerned U.S. Government agencies. The Department of Justice regularly participates in these reviews.

Given the new A.I.D. priorities, which include a focus on supporting democracy, we will continue to support administration of justice programs. A.I.D. considers the following factors in setting priorities and allocating resources:

- Need - the conditions of the host country and the identified problems in the justice sector within the context of consolidating democracy and promoting market economies;
- Opportunity - the extent to which A.I.D. appears to have a comparative advantage in providing assistance, taking into account what other donors are or could be doing;
- Commitment - the extent to which there appears to be a strong commitment on the part of key groups and institutions, and a record of good performance in using foreign assistance; and
- Demonstration effect - The extent to which a country plays an important leadership role in its region.

- Foreign policy - the extent to which success in a country relates to particular U.S. government interests.

Consistent with the Vice President's National Performance Review, A.I.D. will give increased emphasis to assessing results, rather than just counting inputs and outputs. In all sectors, including judicial sector programs, we will be asking our regional bureaus and field missions to identify expected achievements for our assistance. And we will want to know how they will track progress towards those objectives.

This emphasis on results will be a challenge because development is a long-term effort. But we are already working hard to develop a planning, programming and monitoring system that will consider the important attributes of the administration of justice, such as fairness, accessibility, effectiveness, accountability and independence, in a realistic time period.

#### IV. POLICE TRAINING

The Committee has expressed a particular interest in police training. I will briefly discuss this segment of the administration of justice program, which I emphasize comprises but one aspect of effective judicial sector assistance.

Skilled, impartial and honest police are an essential part of an effective and efficient justice system. Support for police training, therefore, is properly seen in the context of an overall democratic development strategy. At the same time, not all aspects of police training are part of the A.I.D.'s sustainable development mandate. At the same time, A.I.D. recognizes that the existence of organized crime, drug-related criminal activity and other transnational law enforcement concerns threaten our efforts to support sustainable development. As is determined to be necessary to support sustainable development, and within the framework of the interagency consultation process described by Counselor Wirth, A.I.D. administration of justice programs will address these issues, often using the expertise of the Department of Justice and other U.S. law enforcement agencies.

For instance, the new AOJ program in Bolivia is a good example of an integrated program that encompasses long range institutional development objectives -- judicial efficiency and accountability, effective criminal investigation and prosecution and alternative dispute resolution -- with an awareness of U.S. law enforcement objectives. The program includes specific activities related to the controlled substance courts. This is also an excellent example of interagency coordination. The



program implementation team includes representatives from A.I.D., ICITAP and the Department of Justice's Office of Professional Development and Training. We envision this to be a model for effective program implementation.

The interagency consultation process envisioned by the Administration will provide the forum for reviewing specific country programs, balancing any trade-off between conflicting objectives, and considering how best to coordinate the development assistance programs administered by A.I.D., with other programs, including police training.

With regard to ICITAP, let me say that A.I.D. has 7 years of experience working with ICITAP in Latin America. ICITAP programs have provided high-quality and relevant training, which have resulted in an improved capacity to investigate crimes. We have considered this to be an important aspect of administration of justice programming.

I will defer to the Deputy Attorney General as to whether there are internal administrative arrangements that might be altered. As the Committee is aware, the State Department/ARA has delegated authority to oversee the ICITAP program which is completely funded with A.I.D. appropriated funds. These funds are transferred to State which, in turn, transfers funds to the Department of Justice for ICITAP. This arrangement seems overly complicated and perhaps unnecessary.

The future of ICITAP offers a complex range of choices, and we need to examine the options carefully. This is precisely the kind of issue that should be handled in the interagency policy coordination committee the Administration envisions.

## V. LOOKING TO THE FUTURE

The Committee has invited us to suggest legislative changes that might increase the effectiveness of our administration of justice programs. Members are already aware of ongoing consultations between the Administration and Congress concerning a new foreign assistance act that would provide a contemporary legislative framework for all A.I.D. activities. I will not duplicate in this testimony those discussions, other than to underscore the common agreement that a fresh framework, focusing on the challenges of the post-Cold War era, is essential if we are to achieve our objectives.

The issue of police training draws attention specifically to a review of the prohibitions contained in Section 660, but I would urge that this be undertaken in conjunction with a new legislative framework. Within the context of that exercise, the Administration and the Congress should review what kinds of law

enforcement assistance should be authorized that are consistent with sustainable development.

Let me conclude by emphasizing the importance ascribed by A.I.D. to administration of justice programs because of their relevance to all aspects of sustainable development. As a direct result of A.I.D. assistance in this area there is a growing determination in many countries to convert the rule of law from a cherished but unattainable ideal to a practical reality. There has been impressive growth in the ranks of reformers. And we are now seeing other international donors initiate programs to respond to an increasing demand for improved administration of justice. We look forward to expanding these programs in different regions and countries as the needs arise and resources are made available.

PREPARED STATEMENT OF PHILIP B. HEYMANN, DEPUTY ATTORNEY GENERAL,  
DEPARTMENT OF JUSTICE

Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today. The importance of legal reform in establishing stable democratic governments concerned me long before I returned to the Department of Justice and I am therefore pleased that the committee has taken the time to examine this question. Not to dwell on my own background but rather in the interest of full disclosure I should mention that as director of Harvard Law School's Center for Criminal Justice I conducted several pertinent studies, including ways to help Guatemalan courts and prosecutors cope with political violence, methods adopted in several Western countries for investigating and prosecuting cases involving terrorists, bilateral cooperation between the United States and Mexico on counternarcotics matters, relations between the United States and Germany in criminal cases, police reform in South Africa, the role of the prosecutor in Colombia and criminal justice reform in the Russian Federation. These experiences have given me a practical understanding of the problems involved in institution building and an appreciation of the role that the Department of Justice can play in this area.

In speaking with you today, I would like to describe my understanding of the policy benefits to be derived from supporting legal reform programs, in particular the institutional benefits to the Department of Justice. In so doing, I plan to concentrate by way of example on counternarcotics programs, then to summarize some of our other training and assistance activities. I will outline my thoughts on how the Administration of Justice (AOJ) and other legal reform programs could be strengthened to benefit the American people and the recipient governments by drawing more on input from the Department of Justice. Finally, I will mention some of the ways by which we can achieve that objective.

POLICY REASONS FOR INTERNATIONAL TRAINING AND ASSISTANCE OF AOJ AND OTHER  
LEGAL REFORM

For four decades, American foreign policy followed the path that George Kennan described in his 1947 article. The cold war and the ideological debate on which it was based provided both context and organizing principle for foreign policy decisions, including choices about aid. The existence of two superpowers and the logic of containment dictated a mirror image model of foreign aid in much of the world in which each move by one of the two was met with a corresponding countermove in kind. Decisionmaking was not necessarily easy but the parameters laid down by the dispute narrowed the range of choices, permitting the participants to move with the predictability and formality of courtiers in a ballroom. However, when the cold war ended, so did the minuet.

Although 40 years of containment was not always productive for ourselves or even for the beneficiaries of our largesse, it did provide certainty. It also fostered the growth of a bureaucracy that became skilled in making the kinds of decisions necessary in those times and delivering the type of assistance entailed by the zeitgeist. As the power of our former adversary waned, however, the familiar boundaries of the foreign policy debate began to dissolve and with them went the framework for our foreign assistance decisions. For the last 5 years, the United States has struggled to find a substitute standard to guide our foreign aid determinations.

The Administration has identified the promotion of democracy as one of the pillars on which future aid decisions will be based. However, this principle—so familiar to us and so essential to our political life—reveals its complexity when we attempt to use it as a guide to making decisions about foreign aid. Democracy on one level has to do with freedom: the freedom of the people to decide their form of government, to elect their leaders, to set policy, and in general to rule themselves. This aspect is the one most familiar to us in the United States and it is the one on which we are most likely to focus in promoting democracy abroad.

However, in a democracy freedom must accommodate the rule of law. No democracy can function effectively without the rule. If no individual is bound to respect the policy established by the people as a whole, those people cannot be said to have set the policy in any meaningful way. If a few individuals are not bound by the policy then these individuals ultimately are the rulers of the rest and the form of government must be something other than democratic rule.

Additionally, modern democratic governments have balanced the right of a people to communal self-determination against the right of each individual to personal self-determination. They have tempered democracy in its purest form with the dedication of personal rights, the dedication itself being immune to ordinary democratic processes. These personal rights are founded upon the modern understanding of the fundamental nature of human beings.

Finally, the freedom of a people to govern must accommodate the coexistence of other peoples. Political regimes must be able to interact in cooperative ways. In the long run, democratic regimes are likely to be more stable than nondemocratic regimes and therefore more capable of engaging in cooperative endeavor. This is because people will be more satisfied with their government if they are ultimately responsible for its policies. Democratic rule in an international setting must also be localized properly.

Consequently, in promoting democracy abroad, we should emphasize that freedom goes hand in hand with respect for the rights of others as embodied in international norms, and more specifically the rule of law. In other words, programs intended to foster democracy should include significant components on respect for international norms and the rule of law.

Besides the foregoing philosophical argument in favor of a legal component for democratic development, the Department of Justice has an institutional interest in stressing the rule of law as an integral part of the administration's development strategy. Our interest derives from the increasing incidence of all kinds of transnational crime over the last two decades, particularly in the areas of terrorism, narcotics and fraud. Crime, no less than other enterprises, crosses national boundaries with ease, aided by efficient international communications and transportation. Congress has responded with legislation that provides extraterritorial jurisdiction over criminal acts committed outside the United States that are completed within our borders or have an effect here or in some cases on our citizens. Working together, the Department of Justice and the Department of State have greatly strengthened the reach and efficacy of our bilateral law enforcement accords, including extradition and mutual legal assistance treaties, and we have broken new ground in multilateral agreements. However, the United States cannot prosecute every offense that has some conceivable nexus to this country. In some cases, our interest in prosecution may be less than that of another country; in others, the location of the evidence or the accused will make it more convenient or practical to try the case abroad; and in yet others foreign governments may decline to extradite individuals but will agree to prosecute them domestically.

Investigation of transnational crime, no less than its prosecution, will likewise involve multiple jurisdictions and cooperation among different governments. To be useful, the product of these investigations should be as nearly interchangeable as possible. Procedures need not necessarily be identical but they should incorporate rules to protect the accused, limit police power, ensure equitable tribunals and provide decent prisons. Because we must work together, the Department of Justice will seek to promote the ability of foreign countries to investigate offenses effectively and with due regard for human rights, to prosecute them competently, to adjudicate them fairly, and in the case of a conviction, to punish the guilty in accordance with accepted norms.

#### TRAINING AND ASSISTANCE IN THE COUNTERNARCOTICS CONTEXT

Our interest in international training extends across a range of issues: criminal law enforcement, immigration and asylum, competition and trade, environmental regulation and protection of intellectual property. I have picked one facet of one of them, the need for cooperation in counternarcotics enforcement, to illustrate in greater detail the basis for our interest.

Although the Department's international counternarcotics operations work well, the world's drug traffic is too large for the United States to take on alone. Moreover, we believe that each nation has primary responsibility for combating crime that occurs within its borders. The community of nations owes its collected citizenry protection from criminal conduct. When that conduct crosses national boundaries the only effective way to discharge that duty is through collaboration with one's counterparts abroad. Only through joint, cooperative efforts will we be able to confront transnational criminal conduct in a manner consistent with the requirements of sovereign states. Thus, sound practical and philosophical reasons underpin our commitment to coordinate our law enforcement activities overseas with those of foreign enforcement agencies in respect of counternarcotics operations in particular and crime generally.

The United States has a vital interest in the ability of other countries, especially major source and transit countries, to enforce their own laws against drug-related offenses with vigor, fairness, and the severity that those offenses merit. Our interest has two aspects. First, the enormous profits generated by drug trafficking concentrate wealth and power in the hands of a criminal class whose utter contempt for law undermines democratic government. In helping other countries to interrupt this traffic through sound enforcement practices, we better the chances for democ-

racy's survival in those areas where drug profits threaten it. Second, improving the quality of foreign law enforcement agencies enhances their capacity, and often their inclination, to cooperate with counternarcotics efforts by United States enforcement agencies.

However, major source and transit countries may lack skills or experience in investigative, prosecutive, or judicial processes to deal with the sophisticated techniques of international narcotics traffickers. These gaps can be overcome through training and assistance in the proper use of methods such as controlled deliveries, undercover agents, wiretaps, cooperating witnesses and other like tools. Currently, the Department of State's Bureau of International Narcotics Matters funds antinarcotics courses provided by Drug Enforcement Administration at a cost of \$2.5 million per year to teach these methods around the world. This amounts to a very small fraction of the amount authorized for international narcotics control. The DEA benefits by establishing working relationships with its counterparts abroad, foreign governments profit by developing techniques that enable them to confront powerful narcotics traffickers and the American public gains through better international law enforcement.

As our appreciation of the need for counternarcotics training has grown, the administration has devoted increasing resources to a variety of programs that promote improvement of other countries' counternarcotics capabilities. The responsibility for international counternarcotics training is shared by several agencies, including Treasury (U.S. Customs Service, Office of Enforcement, Office of the Controller of the Currency), State (Bureau of International Narcotics Matters), Department of Defense (Office of Coordination for Drug Enforcement Policy and Support), and Justice (principally the Drug Enforcement Administration). Ad hoc or other informal consultation processes take place among the various agencies but no regularly established coordinative mechanism integrates the different kinds of training to minimize overlaps. In deciding whether to provide training to a given country, agencies are guided by their internal assessments of need or rank ordering of importance in evaluating foreign countries' requests for training; however, there is no forum in which to compare these assessments against one another.

#### OTHER TRAINING AND ASSISTANCE ACTIVITIES OF THE DEPARTMENT OF JUSTICE

In focussing on counternarcotics, I have necessarily omitted many areas of interest to the Department of Justice, in terms both of geography and subject matter. For example, in Eastern Europe and the Newly Independent States of the former Soviet Union, we are extremely concerned about the level of violent crime associated with indigenous criminal syndicates and heightened activity by Italian organized criminal groups. There are also opportunities for training in fields such as environmental enforcement, competition policy and protection of intellectual property. In addition to these areas and our concern with counternarcotics training, there are other important programs that I should mention briefly.

In dollar terms the largest is the Administration of Justice Program, which is funded by the Agency for International Development (AID) under the Foreign Assistance Act. The AOJ program is more fully described in AID's statement. A draft GAO report from March 1993 indicates that the United States has spent about \$169 million for judicial reform projects in Latin America. This figure includes money transferred by AID to the Department of State to fund the International Criminal Assistance Training Program (ICITAP). ICITAP is a hybrid organization. While part of the Department of Justice, nevertheless receives its funding as well as significant direction from AID and State. ICITAP is staffed largely by current or former FBI agents. It contracts with highly credentialed retired law enforcement professionals to carry out projects identified by the State Department's Latin America Bureau. Its programs are highly respected for emphasizing human rights in police training, developing police academies, forensic laboratories and offices of professional responsibility in several countries providing judicial protection assistance in Colombia and implementing a corrections development program in Panama. Since 1986, ICITAP has received \$76 million from AID for programs in Latin America, of which approximately one-third was for Panama. The Office of Professional Development and Training (OPDAT) in the Criminal Division of the Department of Justice in cooperation with State and AID has started over the last 14 months programs to train prosecutors in Bolivia and Colombia, and plans to begin similar programs in Guatemala, Peru and Haiti.

Congress has authorized SEED (Support for Eastern European Democracy) and FREEDOM Support Act funds for Rule of Law projects designed to foster democratic institutions in Central and Eastern Europe and the former Soviet Union. The same draft GAO report indicates that approximately \$3 million (three-tenths of 1 percent)

of the more than \$1 billion available for assistance has been spent on judicial reform in fiscal years 1990 through 1992. This money has funded the Central and Eastern European Law Initiative of the American Bar Association, which has provided long term legal advisers, reviewed proposed laws and assisted legal reforms in Central and Eastern Europe. The U.S. Information Agency (USIA) has received funds for a complimentary program, including support for experienced Justice Department prosecutors who lived in Eastern European countries for up to 6 months advising the new democracies on legal reform, primarily in criminal law and procedure. SEED money was also used for long-term assignments of attorneys from the Antitrust Division who provided expertise to Eastern European governments on competition issues during their transformation to free-market economies.

Finally, the Department of State's counterterrorism office provided smaller amounts for counterterrorism training undertaken by Department of Justice components.

#### CURRENT INTER-AGENCY COORDINATION

We look forward to a greater role for the Department of Justice in assigning priorities and developing strategy, designing program content, and delivering training and assistance. The Department of Justice hopes that the proposed consultative process will enable it to have greater input at two levels: at the initial planning stage, when broad decisions are made regarding allocation of resources for regions and particular countries, and at the implementation stage, when programs are being designed.

With regard to overall decisions allocating Foreign Assistance Act funds for development purposes, we understand and accept AID's responsibility in this area. We also appreciate State's role in allocating the economic support funds (ESF) which underwrite much of the administration of justice program. However, the decisions reached by State and AID in this process, to the extent that they involve administration of justice and legal reform programs, have a direct impact on our law enforcement strategy and operations. Given that circumstance and the degree of our unique legal and enforcement expertise and experience relative to that of our colleagues in the foreign affairs community, it is important that the Department of Justice participate in the policy coordinating mechanism.

We also would like to contribute more in implementing administration of justice and legal reform programs. We believe that in many disciplines we are well equipped to supply training and technical assistance for law reform efforts. In dealing with functions such as organization and training of police, prosecutors and courts, officials abroad want to hear from their counterparts in government who have current, practical experience in these disciplines. Moreover, the use of expert resources that are available in the government would permit us to forge ties with foreign law enforcement officials on which effective international cooperation depends, thereby enhancing domestic law enforcement efforts.

Over the last year, we have worked with AID and State to develop pilot programs for legal reform in Bolivia and Colombia that demonstrate how our expertise can be used successfully in designing programs and in delivering training and assistance. We look forward to the opportunity to do so in other programs.

We expect that, in many parts of the world, our interest in promoting the capability of the legal system to prosecute crimes fairly will overlap with the interest of the foreign policy agencies to promote democracy through respect for international norms and the rule of law. In fact, our expectation has been fulfilled in some parts of Latin America, where we are working with State and AID in training prosecutors and police. However, the program in Latin America evolved slowly and in large measure due to individual efforts. I am pleased to say that one of these individuals, Deputy Administrator Michel, will be testifying before you today and that he has transformed his vision into an institutional priority for AID. I am confident that he shares my view of the need to coordinate at a policy level the various programs that I have described so that the priorities of the agencies involved can be aired and placed into a global perspective.

#### BENEFITS OF USING THE DEPARTMENT OF JUSTICE FOR INTERNATIONAL TRAINING AND ASSISTANCE

By identifying countries where an inefficient criminal justice system threatens to reverse political advances or economic accomplishments, we can help to preserve well-being for people who might otherwise slip back into desperate straits. We can also help ourselves, because lawlessness is no longer a local matter. Criminals are in a sense entrepreneurs and like businessmen everywhere they have realized that enormous financial rewards can be had by taking advantage of the ease of world-

wide travel and communication. Those rewards will be reaped in rich countries using raw materials from the poorest ones. The worldwide trade in drugs is the most obvious example, but trafficking in fraud, dirty money and even people is becoming equally ubiquitous.

We cannot police the world. We recognize that responsibility for enforcing criminal laws belongs in the first instance to the place where the criminal conduct occurs. To confront criminals who operate around the world we must cooperate with law enforcement officials from across the globe. Training offers one of the most productive means of ensuring cooperation through harmonizing procedures and emphasizing principles that are common to all civilized criminal justice systems. This training should concentrate on practical methods of investigation and prosecution directed at serious crime that is most likely to destabilize governments.

We already have in place an effective program for antinarcotics law enforcement training. The DEA trains law enforcement authorities around the world with an annual budget at \$2.5 million. In comparing the benefits from this type of practical training with the returns from the \$169 million expended by the United States on general judicial reform in Latin America, we must acknowledge the importance of long-term investments in reform but we should also consider that operationally oriented training allows us to harmonize our investigative and prosecutive methods, especially with respect to the kinds of complex crimes that undermine democracy abroad and reach across our borders to threaten the well-being of our citizens.

In addition to strengthening democratic institutions abroad and enhancing our own capacity to deal with transnational crime, practical training such as DEA carries out will produce another important benefit: by showing investigators and prosecutors abroad how to build cases based on methodical investigation, forensics, detailed recordkeeping and careful preparation, we provide an alternative to reliance on forced confessions and other abuses of human rights. Respect for human rights does not have to be taught separately; it is implicit in the method and approach that we bring to practical problems. Of course, there is more than one way to teach these lessons: ICITAP and the Criminal Division's Office of Professional Development and Training convey them through generic workshops and exercises and we expect that they will continue to do so. However, we look forward to an opportunity for the Department of Justice to participate more fully in decisions as to which countries receive what type of training.

#### CONCLUSION

I have three suggestions to improve the prospects for the kinds of pragmatic training that I have been advocating.

- First, the Department of Justice and the foreign affairs agencies should continue to develop a process by which the Department can factor its domestic and international law enforcement concerns into the latter's programs for legal and judicial reform at the levels of policy development, program design and implementation. Our experience in Colombia and Bolivia will serve as a model for us to follow in the future.

- Second, section 660 of the Foreign Assistance Act contains a prohibition on the use of most forms of foreign assistance funds for police training, subject to certain exceptions. We need to work with Congress to consider ways to ensure that prohibitions of this type do not interfere with the important work related to law enforcement that needs to be done.

- Third, we would like to work towards broader Department of Justice involvement in delivering programs intended to develop institutions, such as training police and prosecutors, and assisting in other inherently governmental functions. Police and prosecutors want to hear from counterparts who are actively engaged in the same profession. Similarly, with respect to other kinds of training, e.g. in competition policy, environmental enforcement, protection of intellectual property, etc., the participation of government sector providers permits involvement by those with the greatest and most current expertise in the topic.

Once again, Mr. Chairman, I am grateful for the opportunity to appear before the House Foreign Affairs Committee today to give you my views on the Administration of Justice programs and I look forward to working with you and the other distinguished members of the committee in the future on these issues. I would be pleased to answer any questions that you may have.

Question for the Record submitted to  
James Michel, Mark Richard, Timothy Wirth  
House Foreign Affairs Committee  
September 14, 1993

QUESTION

The U.S. foreign aid budget faces severe constraints. Given enormous needs in judicial systems in Latin America and elsewhere, how do we set priorities?

- Should all countries in the world be eligible for AOJ?
- Should all countries in the world be eligible for police training?
- What standards do we use to determine eligibility?

ANSWER

- Country priorities are set based on the following criteria: (1) strategic importance to the United States; (2) prospects for democratization; (3) degree of U.S. leverage and access to critical players; (4) potential demonstration effect of an AOJ program within a region; and (5) to a certain extent, U.S. law enforcement considerations.
- The type of assistance offered in any country will generally reflect the embassy country team's assessment of the area(s) in a host country with the greatest need and strongest local leadership. The country team must balance its assessment with general U.S. foreign policy goals. To determine priorities among judicial assistance programs, it is important to consider the focus of potential AOJ programs -- on the state judicial apparatus, on NGOs, on judicial system management, on the administrative law system, on criminal law, or on commercial and civil law.



- While resource constraints do not permit all countries to receive AOJ assistance, all democratic (or democratizing) countries should be considered eligible -- in the sense that legal reforms may be identified as a priority. It is important in our planning to allow for the possibility of emergency assistance in the event that a unique event or opportunity were to occur.
- There is a demonstrated need in many democratizing countries for better trained civilian police forces. Eligibility for USG police training assistance should depend on the criteria listed above and the commitment and capacity of local leadership to make proper use and build upon any training provided. Priority should be given to countries that have, or are developing, effective mechanisms for civilian review or control over police forces. In countries where armed forces have effective control over the police and internal security apparatus, U.S. assistance should be limited.

Question:

Do your departments believe that governments that receive AOJ, including police training, should demonstrate a commitment to human rights to be eligible for assistance?

- How will/do you determine whether the recipient government is committed to real reform and to defense of fundamental human rights before we begin to provide assistance?
- What mechanisms should we use to make this determination?

Answer:

- A commitment to international standards of human rights is one of the key criteria for assessing whether a government should receive AOJ assistance. Because observance of human rights is a measure of democratic government, a country's human rights record will play a prominent role in our decision whether and how to implement AOJ assistance. A fundamental goal of AOJ programs is to develop the institutional infrastructure necessary to safeguard human rights.
- A point of departure for assessing a country's commitment to international human rights is the Department of State's Country Reports on Human Rights. This annual report provides basic criteria upon which we can evaluate a potential recipient's human rights record. This evaluation can then be refined based on continuing analysis provided by the ambassador and the embassy's country team.

- In addition, the new inter-agency working group that is to be established for all democracy programs, chaired by the State Department, will coordinate AOJ activities and provide a forum for making such determinations.
- Countries with poor human rights records may be those that most need, or those to which we most want to provide, AOJ assistance. Since the commitment to the fundamental reforms necessary to improve a country's human rights record may solidify over time, we should not wait for such a commitment to begin assistance, but rather offer only such assistance in the beginning as is necessary to start the reform process. By gauging our initial funding commitment to the recipient's political commitment at that time, we can offer an important boost to the reform process while developing evidence of its long-term potential. We can then make a decision on long-term funding in the light of experience with initial project assistance.

QUESTION

Where a serious question exists as to a recipient government's respect for fundamental human rights, should we provide AOJ only through a staged program with assessment reviews at specified intervals?

- For example, in Peru where secret terrorism trials deny important procedural rights and other serious human rights problems persist, shouldn't we set out very clear benchmarks which need to be met before we provide each level of AOJ aid?

ANSWER

- We agree with the Committee's approach and are using an incremental approach in our AOJ programs in countries with histories of serious human rights problems. In Peru, we have suspended most AOJ efforts because of concern over denial of due process in the terrorism courts. The new project in Peru will have clear benchmarks for progression to higher levels of assistance.
- However, we have learned that important progress can be made even in countries with notorious human rights records. In Guatemala, AOJ programs, for example, have supported the Human Rights Ombudsman's office and have focused on assisting civilians in gaining access to the judicial system. Similarly, AOJ programs have supported professional associations of lawyers to increase their awareness of the need for reforms that protect individual rights and to encourage their participation in such reform efforts.

QUESTION

If military jurisdiction in a country effectively precludes prosecution of human rights abuses by military personnel against civilians, would that affect your decision for that country?

ANSWER

- The failure to prosecute military personnel for human rights abuses is taken into account in assessing the AOJ priorities for any particular country. A decision on whether or not to have an AOJ program would not be based solely on this factor, but it would be considered along with other issues, such as willingness of the military to consider civilian jurisdiction in certain cases and the capacity of the civilian prosecutor's office to pursue such cases. Alternatively, we would consider providing AOJ assistance where military courts have shown a willingness to deal honestly with crimes committed by military personnel.
- Curtailing AOJ assistance in some countries may hinder civilian efforts to improve the legal system. This question requires the application of a balancing test between the immediate needs for reform, and the long-term goal of restricting the jurisdiction of military courts to cases having an impact on the good order and discipline of the service -- as in the U.S.

QUESTION:

How much do we spend on training police? How much on training judges? How much on training prosecutors?

-- Do our spending allocations reflect our priorities?

ANSWER:

- The AOJ program supports the balanced development of justice institutions; it is not just a training program. AOJ programs are administered under different statutory authorities for different regions and by different agencies. Some have their own statutorily-created assistance coordinators. While most AOJ projects are funded by USAID, not all are. As a result, aggregate figures of the kind requested are not available.
- In Latin America and the Caribbean, approximately \$50 million was invested in AOJ projects in each of the last two fiscal years. Of this, ICITAP received \$33.7 million in FY 1992 and \$17.9 million in FY 1993. While ICITAP is largely a police assistance program, it also works with judges and prosecutors. In some countries, Colombia for example, it is providing significant support to investigators outside police forces. While many USAID projects began by concentrating largely on court systems, they have become increasingly diversified. In some countries AID is now giving priority to development of prosecutors offices.

- In Colombia, for example, the ongoing project (which includes ICITAP) has thus far made available \$7 million each for investigative and prosecutorial development, \$1 million for the courts, and \$1 million for other activities (among them community conciliation centers). In the remaining years of the project, the courts are expected to increase their activities to a level more commensurate with that of the investigators and prosecutors. Priorities are being determined jointly by the Colombian Government and U.S. Embassy.
- The New Independent States and Central and Eastern Europe, the other major programming regions, have received substantially less in AOJ/Rule of Law funding. The NIS received approximately \$3.5 million during FYs 92 and 93. Central and Eastern Europe received roughly the same amount over the last three fiscal years. As an example of the diversity of activities being supported, \$330,000 in assistance in Romania has been split among the General Prosecutor, Parliament, a fledgling judicial association and the law schools. Since these programs are under the direction of legislatively-created, State Department coordinators, priorities are determined in Washington.
- The new inter-agency working group chaired by State that is to be established for all democracy programs will coordinate AOJ activities and will provide a forum for reviewing program priorities and budget allocations on a worldwide basis.

QUESTION

How do legal reform objectives relate to other foreign policy goals with which they may conflict, such as economic reform or political stability?

- What takes precedence for the U.S.?
- Does this vary by country? Who makes these determinations?

ANSWER

- The objectives of legal reform programs should not conflict with other foreign policy goals such as economic reform or political stability. These goals are complementary.
- The President, through the Secretary of State, determines the objectives of U.S. foreign policy. These objectives are implemented by the State Department, USAID, USIA and others. In some instances, such as Eastern Europe and the NIS, assistance coordinators have been designated to help achieve these foreign policy goals. Country specific priorities and goals generally are determined by the ambassador and embassy country team. In the future, the inter-agency working group, headed by the State Department, will work to ensure that AOJ and other democracy building programs enhance and support the general goals of our foreign policy.
- Economic reform is more easily accomplished where there are laws that clearly regulate economic relationships and where the courts can be counted on to resolve economic disputes fairly. Political stability depends on independent branches of government, clear laws, and respect for individual rights. AOJ programs support the creation of these institutions and laws and provide training to ensure respect for individual rights.



## QUESTION:

The Justice Department makes a persuasive case on the threat which international organized crime poses. But do programs such as AOJ really address this threat?

- Can you cite specific examples of where AOJ programs have or could make a difference in attacking this problem?
- Given the degree of corruption generally present in the recipient countries, can we really hope to make a difference in attacking the organized crime threat?
- Are there any other U.S. Government programs which are aimed at strengthening the ability of other countries to combat organized crime?
- Which areas of the world are particularly susceptible to organized crime at this time?

## ANSWER:

- Most AOJ programs do not attack organized crime directly. They help strengthen the justice system to resolve cases on their merits and to hold judges and officers of the court accountable for breaches in professional conduct. Over time, they can reduce the scope of operation -- in both ordinary criminal activity and corruption of the justice system -- of organized crime.
- In Colombia and Bolivia, AOJ programs have made a difference in fighting international narcotics trafficking organizations. Training and administrative support assistance strengthened the judicial and law enforcement institutions in both countries, improved investigative

capabilities, and supported courts handling drug cases. In Venezuela, AOJ assistance has helped the government increase the number of corruption prosecutions. In Lithuania, technical assistance is focused specifically on drafting laws and training prosecutors to fight organized crime.

- There is a great deal of investigative cooperation between U.S. law enforcement agencies and foreign governments on specific organized crime cases. The Justice Department, FBI, DEA, U.S. Customs, and INS regularly share evidence and other information on organized crime with foreign counterparts. The State Department's Bureau of International Narcotic Matters also provides funds for the DEA's anti-narcotics program. Such efforts strengthen our foreign counterparts' ability to combat organized crime.
- Several countries in Latin America, with relatively new and fragile democratic governments, are particularly vulnerable to well-financed, deeply entrenched narcotics cartels. In southeast and central Asia, the heroin trafficking networks are equally well entrenched. The sudden disappearance of the old systems in Eastern Europe and the former Soviet Union have left an inviting environment for organized crime.

QUESTION:

Clearly, AOJ programs reflect differing demands. There is a general perception, however, that AOJ programs have concentrated on training prosecutors and neglected defense training issues.

- Is this perception accurate?
- What efforts do we make to ensure adequate protection of the rights of the accused?

ANSWER:

- It is difficult to generalize about AOJ programs, as focus tends to differ from region to region. For example, in the New Independent States of the former Soviet Union and in Central and Eastern Europe, AOJ assistance originally was focussed on programs fostering independence of the judiciary. Hence, we concentrated on training judges. As the Department's programs in these regions have evolved, their breadth has expanded to include both prosecutors and defense attorneys. In Latin America, AOJ programs have evolved from an early focus on police training, to more systemic reform assistance.
- In Latin America the focus has been more on the criminal process. Large-scale training of prosecutors is only beginning now with the adoption of new criminal procedure codes in several countries. In general, whenever assistance is requested to implement a new accusatory system, programs will support the development of defender services.

- In order to ensure that defendants receive a vigorous (and meaningful) defense, all participants in the criminal justice system, judges, prosecutors and defense attorneys, must assert their roles. The training of judges and prosecutors is just as necessary to the protection of a defendant's rights as training defense attorneys. AOJ programs also support efforts to revise criminal codes to ensure due process and effective judicial review. The US prosecutors who participate in AOJ programs are primarily Assistant U.S. Attorneys, whose role is to help foreign prosecutors learn how build cases while respecting defendants' rights and the paramount importance of the law.

QUESTION:

Are the problems that AOJ programs seek to address primarily technical, such as a lack of resources and appropriate training, or more fundamental to the political system, such as a lack of political will to implement judicial reform?

- Doesn't history suggest that merely providing technical inputs such as computers and training will not overcome a lack of political will to carry out reform? Hasn't that been the case in El Salvador for some time?

ANSWER:

- AOJ programs seek to identify areas where legal reform can be successful and address both technical and political problems. The specific problems addressed by AOJ projects vary by region and by country. While technical inputs cannot overcome a lack of political will, carefully selected inputs can encourage the development of political will by showing that important changes are possible.
- An objective of AOJ programs is to encourage indigenous reform elements to create the momentum for gradual and continuous improvements. This requires political commitment and will. Early AOJ programs in Latin America that have been criticized for lacking host country political will were intended to generate demand and to build consensus for reform. Government commitment to legal

reform has grown substantially over the years even in the case of El Salvador. In Eastern Europe and Russia, AOJ programs have developed in the wake of historic changes driven by a will to develop market democracies. The political will for legal reform in these regions has outstripped USG ability to provide adequate technical assistance.

- AOJ assistance has produced wide-ranging results which required political commitment and will on the part of host country counterparts as well as provision of specific training, commodity and technical assistance. These successes include new merit systems for selection and promotion of judges; movement toward open, accusatory criminal proceedings including an expanded role for the public prosecutor; greater attention to public defense; and increased financing for the justice sector in many countries.

QUESTION:

What kind of work is the U.S. doing in foreign prisons?

- How and why did we start working in prison reform in other countries?

ANSWER:

- The Bureau of Prisons (BOP) within the Department of Justice has provided, on an ad hoc basis, technical assistance to foreign prison authorities. The assistance has generally consisted of a report with management recommendations following an advisory visit.
- The U.S. Government regularly receives requests for prison assistance from around the world. The AOJ program has limited authority to provide this assistance, while BOP has the authority, but has very little funding for this assistance. Assistance is provided in response to requests from recipient governments passed through our embassies.
- Among the countries that BOP has visited are the following:
  - Russia: BOP conducted an advisory visit and drafted a project proposal, which has yet to be funded.
  - Romania: Advisory/training visit;
  - Jamaica: Advisory/training visit;
  - Panama: Advisory/training visit; limited follow-on training now being provided by ICITAP.
  - Colombia: Advisory/training visit and return trip by Colombian officials to see U.S. prison facilities.

**Question:**

Does AID have sufficient personnel with technical expertise to implement these programs?

**Answer:**

- As the Administration of justice program in USAID grows, the technical expertise to manage and oversee the program expands. Within the Bureau for Latin America and Caribbean (LAC), the region with the largest portfolio of projects in this area, there are now over 50 full-time USAID employees in democracy program management. In each country with major AOJ programs, there is at least one technically qualified US direct hire or personal services contractor to oversee the program. Within USAID, the term "technically qualified" refers to an individual with an advanced degree in a relevant area such as law, political science or public administration; practical experience in the field of expertise and/or experience in management and implementation of projects in a developing country context; and language ability.
- Technical expertise is sparse in other regional bureaus; however, USAID is addressing the problem as part of its reorganization and right sizing exercise. This involves a careful review of the appropriate mix of technical support



and program management personnel that are required to manage an expanding democracy program. The creation of the new Global Affairs Bureau will provide a home to professionally trained and technically qualified USAID officers to design, manage and evaluate democracy programs including administration of justice.

- USAID uses a variety of mechanisms to carry out AOJ programs including (1) competitively let contracts that employ technically qualified long- and short-term advisors to work in host countries; (2) US-based NGOs such as the InterAmerican Bar Foundation; (3) universities such as Florida International University; (4) professional associations such as the American Bar Association; and (5) other groups such as the National Center for State Courts all of which utilize their specialized expertise to transfer skills and knowledge to the field. We also use local NGOs, think tanks, universities and professional associations to implement programs. Programs are also implemented with the technical assistance of other US Government agencies including USIA and the Department of Justice.

QUESTION:

The State Department generally does not implement programs. Is it capable of managing AOJ program responsibilities?

ANSWER:

- While the State Department has direct authority for implementing counter-narcotics and anti-terrorism programs, the Department serves an overall policy and coordinating role for AOJ programs generally.
  - The embassy country team, headed by the ambassador, sets priorities for the recipient country and reviews program implementation on a regular basis.
  - State will chair a new inter-agency working group in Washington to set overall policy and priorities for all AOJ/rule of law programs, ensure proper coordination, and work with program agencies to ensure policy implementation.
- USAID, USIA, Justice and other USG agencies are responsible for implementation and management of AOJ programs in their areas of responsibility. State will continue to implement some rule of law programs in the former Soviet Union.

QUESTION:

If Justice were to design and implement AOJ programs, would it be too prone to promoting U.S.-style systems in complex foreign cultures?

- Is this a problem with the ICITAP approach?
- How does ICITAP tailor its training to the particular country or legal system in which it operates?

ANSWER:

- Justice designs and implements AOJ programs in collaboration with State and USAID. All of the agencies recognize the importance of respecting legal traditions in countries where AOJ programs are being developed.
- However, there is great demand overseas for training in scientific investigative techniques, which should not vary among common, civil or even socialist (or formerly socialist) legal systems. In much of the civil law world, moreover, there is a movement toward adversarial criminal proceedings for which the U.S. experience with prosecutorial training and management is highly relevant. In working in both these areas, the Justice Department is showing sensitivity to the unique political and cultural demands of individual countries.
- ICITAP, for example, develops its activities in each country in close consultation with the local legal community. It assesses the needs of the specific organizations to which it may provide assistance and adapts courses or technical assistance to those needs. It uses host country experts to address questions of local law.

QUESTION

If the Justice Department would like a larger role in determining policy and implementation of this program, does it have or is it prepared to devote sufficient trained personnel and resources to this effort?

ANSWER

- If given the opportunity, the Department of Justice could contribute more in the future than it has to date in determining policy and providing training and technical assistance. With respect to determining policy, the expertise is available and ready to use now. In implementing programs that require Justice personnel, we have some limits.
- Currently, the two largest programs, ICITAP and DEA's international training operations, reimburse the Department of Justice for salaries of full time employees. Also, the Bolivian and Colombian training funded by USAID includes reimbursement to Justice for most costs. However, for the highly effective program in which federal prosecutors serving as professionals-in-residence spend up to six months advising Eastern European governments on law enforcement and other reforms, Justice has paid the salary costs. Before expanding this program, we would need to find a funding source, perhaps along the lines mentioned above.

QUESTION:

What is the role of the Department of Defense, which has conducted a number of Judge Advocate General programs with foreign countries and has funded some police and/or human rights programs with "expanded International Military Education Training (IMET)"?

ANSWER:

- Under "Expanded IMET" authority, DOD has developed a military justice/human rights program designed to promote effective military justice systems in accordance with internationally recognized human rights. The program seeks to bring together host country military, government civilians, and legislators as appropriate. Phase I surveys the in-country situation by contacting both U.S. and host country personnel to gather information on host country military justice systems and human rights practices. Phase II brings selected host country personnel to the U.S. to develop a tailored program to be presented in-country during Phase III.
- DOD will participate in the inter-agency working group headed by the State Department and its Expanded IMET programs will be coordinated with all AJO programs.

QUESTION:

Do other donor countries provide AOJ type assistance?

- If so, are their programs similar to ours or do they have a different focus?
- How do we coordinate our efforts with other donors to reduce duplication of effort?

ANSWER:

- Yes, other donor countries provide legal reform assistance but it is not of the scale and type provided by the United States Government. Other countries focus on specific activities or projects on a much smaller scale. For instance, Spain regularly organizes conferences for the presidents of supreme courts from the ibero-hispanic countries and has donated legal libraries. The Japanese government has provided resources to ILANUD, a UN-affiliated regional organization based in San Jose, Costa Rica to carry out drug awareness projects. The German, Italian and French governments also have provided assistance to Eastern European governments in the revision of constitutions and legal codes.
- Donor coordination is of growing importance and there are a variety of mechanisms to carry out this function. For instance, the Development Assistance Committee of the OECD

met in Paris this past summer to discuss efforts to support democracy through foreign assistance programs. Also, the Council of Europe and the G-24 met recently to discuss in-country coordination of democracy assistance for Eastern Europe. In addition, the UN Drug Control Program (UNDCP) and the Dublin Group coordinate anti-narcotics assistance and the UN Crime Commission is beginning to coordinate anti-crime programs.

- In major recipient countries, USAID strives to meet regularly with appropriate donor counterparts to discuss programs and to coordinate activities. These informal mechanisms are most advanced in Central America and Africa.

QUESTION:

Other multilateral donors are now beginning to undertake judicial reform efforts. How will we coordinate our efforts with their programs?

- Let's take Haiti as an example. How are our police training efforts in Haiti being coordinated with the UN framework for reform of the police and armed forces in that country?

ANSWER:

- The World Bank and the Inter-American Development Bank are two multilateral donors that have recently made "modernization of the state" a new funding priority. Both institutions have designated particular offices to take the lead in proposing assistance programs in interested recipient countries. Both institutions, particularly in Latin America, have approached USAID to share information on programs and background data and research, recognizing our experience and expertise.
- As interest in judicial reform and demand for resources to carry out reform efforts has grown, we have cooperated enthusiastically in donor coordination. Representatives of multi-lateral donor institutions are regularly invited to attend USG-sponsored conferences and activities with an administration of justice theme. USAID/Bolivia recently co-sponsored a conference in Bolivia for donor coordination in support of a major judicial reform effort so as to complement on going efforts and avoid duplication. In Eastern Europe and the CIS, the Bureau of Human Rights has coordinated, on a limited basis, its AOJ programs with those sponsored by the Council of Europe.
- With regard to Haiti, consultations have been initiated on a dual track -- in Washington through a consultative group convened by the World Bank and in Port-au-Prince through a donor coordination mechanism under UNDP auspices.



QUESTION:

"Justice must be seen to be done." It's an expression commonly applied to troubled legal systems.

- Are our programs geared toward building the confidence of a country's population in the institutions of justice? How so?
- What indicators would we or do we use to measure such perceptions in a given population?

ANSWER:

- Public confidence is a function of how a justice system operates and how it is perceived to operate. All AOJ projects aim to improve the operation of justice systems, and thus ultimately the public perception of them. However, because of the importance of public participation in judicial reform and the lag that ordinarily occurs between a change in performance and the change in perception, AOJ projects increasingly include activities with the general public.
- These may be general legal education or information campaigns to inform members of the public of their rights, so they will know what to expect and demand of the justice system. We also support court watch programs and activities of NGOs, which see their role as monitoring the judicial system through the media and other public mechanisms to ensure greater accountability by the justice system.
- Public trust and confidence in the system can be measured by public opinion polling and focus groups of key sectors that measure the public's perception of accessibility, timeliness and fairness of the justice system. USIA has expertise in conducting these polls and has begun to measure public perception of certain justice systems.

QUESTION:

What is realistic time frame for AOJ efforts?

- How do we develop effective evaluation tools that will allow us to judge when we have no chance of success, without demanding impossibly quick results?
- How do we determine whether a country has the political will necessary to carry out judicial reform?
- To what degree is effective program evaluation hampered by our ability to receive adequate information or documentation? (A failure to track case loads would be one example.)

ANSWER:

- While fundamental reform of any justice system is necessarily a long-term undertaking (10 years is not unrealistic), AOJ projects must have much shorter-term goals to be able to evaluate project accomplishments. A five-year project, for example, should have at least mid-term and final objectives that reflect realistic goals within the political milieu of the particular country. Programs designed to run over a period of years are subject to an annual review process.
- Host government political will and the potential success of an AOJ program can be measured against these objectives. If at any time a USAID mission or an embassy country team determines that there is insufficient local support for the specific goals of a project, the project should either be

redesigned or suspended until such time as conditions change. (The suspension of the Guatemalan AOJ program is an example of this procedure.) To be effective, the design and evaluation of AOJ projects must reflect the dynamic process within which real judicial reform will evolve in the local political environment.

- In assessing local political will, some of the factors to be considered are: (1) the degree of support for democratic values and reforms within the judiciary, legislature and key executive branch ministries and offices; (2) the existence of a reformist constituency among professional associations and interested NGOs and academic institutions; (3) the degree of independence enjoyed by the judiciary; (4) the level of perceived honesty and accountability of justice sector personnel; and (5) the level of budgetary support to all justice institutions and the willingness of the government to increase it if necessary. We assess these factors on a regular basis over the life of a program.
- Effective project evaluation depends largely on the clarity of project design. By improving the statement of goals and objectives at the outset, and agreeing upon measurements that can either be generated in the course of the project or otherwise made available, we can improve the quality of evaluations now being conducted (formally and informally) by USAID missions, embassy country teams, host governments, other implementing agencies and auditors. The AOJ program actively promotes the concept that justice sector institutions must set their own standards for performance and be accountable for such performance.

QUESTION:

How many US agencies are providing police aid/training overseas?

- How is such training coordinated among agencies?
- How is police training coordinated with broader AOJ objectives, particularly when certain agencies are involved only in police training and not in other aspects of AOJ programs?
- How should the police training role of non-foreign affairs agencies be coordinated?

ANSWER:

- State and Justice provide police assistance through 3 established programs: counter-narcotics (INM), administration of justice (AOJ) and antiterrorism (ATA). In the INM and AOJ programs, State provides funds for training and technical assistance that are delivered by DEA, ICITAP, and DOJ's Criminal Division. Under the Support for Eastern Europe Democracy Act, AID recently made modest funding available to Justice for activities with police in Eastern Europe.
- Police training is coordinated abroad by the embassy country team. In Washington, it will be coordinated by the inter-agency working group chaired at State. At both levels, the implementing agency's goals and broader AOJ objectives will be factored into the programs.
- This dual coordination system will be improved by a more systematic and global inter-agency process in Washington.

QUESTION:

Does the International Criminal Investigative Training Assistance Program (ICITAP) currently conduct all generic police training?

-- Should it play such a role?

-- How is ICITAP structured and staffed?

ANSWER:

- No, ICITAP does not conduct all generic training of foreign police forces. The DEA, the State Department's anti-terrorism program and others also train foreign police forces. While it operates under much broader authority in Panama and El Salvador, ICITAP's general mandate remains in the areas of investigation, police management, and police academy curriculum development.
- ICITAP was created to fulfill a particular function within the administration of justice program. It was not intended to displace training programs related to U.S. law enforcement objectives, such as anti-terrorism, counter-narcotics and other training arrangements that currently exist between counterpart agencies, such as customs services. Each of these programs has a different immediate purpose which would not be pursued as effectively if they were combined. Under the current organizational structure, we do not favor transferring to ICITAP any of the functions now performed by these other programs.

- ICITAP has a director, associate directors for operations and planning and management, six project managers, one forensic science manager, two administrative and one planning and evaluation manager, and approximately 45 staff members. All professional career staff have direct experience in law enforcement and/or international development or education. Fourteen are FBI Special Agents on detail to ICITAP. Over 80% of the staff is fluent in at least one foreign language. In addition to this Washington staff, ICITAP has resident program managers and support staff in El Salvador, Panama, Colombia and Bolivia.

QUESTION:

ICITAP was created for specific police training tasks in Central America. Its staff and program involvement has expanded tremendously.

-- Is the ICITAP structure and staff appropriate for a world-wide training role? If not, what should be changed?

-- To whom does the ICITAP office report? Who controls and oversees its involvement in AOJ programs?

ANSWER:

- ICITAP's internal structure could readily be adapted to support a worldwide program. Obviously, other language competencies would have to be represented on the staff.
- Within the Department of Justice, ICITAP currently reports to the Deputy Attorney General. ICITAP's involvement in AOJ programs has been determined to date primarily by the Assistant Secretary of State for Inter-American Affairs, who holds the delegation of authority for AOJ programs under Section 534(b)(3) of the Foreign Assistance Act. Funding levels have been determined in consultation with USAID. Program content has had continuous input from embassy country teams throughout the region.
- If ICITAP were to receive funding under the Freedom Support Act, USAID would oversee those activities under current delegations of authority with policy guidance and coordination provided by the Department of State. We will be examining options for the unification of oversight with respect to ICITAP if the program expands beyond the Western Hemisphere.

QUESTION:

How much of ICITAP's work is contracted?

-- Is it appropriate, in this sensitive area, to use contractors?

ANSWER:

- ICITAP designs its assistance programs in-house but relies heavily on contractors to deliver the training and technical assistance overseas. This division of labor works well for a program subject to surges of demand across a broad spectrum of technical areas but having no assured budget from year-to-year.

The Justice Department as a whole, particularly the FBI, provides substantial support to the program with direct hire personnel but cannot carry out the program without the support of private contractors. The contractors are not entrusted with policy decisions or other matters that must be handled by U.S. Government personnel. They are hired to handle logistics, to conduct courses (the content of which is approved in advance by ICITAP), and to provide specific technical assistance under the supervision of ICITAP project managers.



## QUESTION

What legislative changes would you seek to run AOJ and other related programs more effectively?

ANSWER

- We seek two legislative changes in addition to passage of the State Authorization bill:
  - First, greater flexibility from Congress to allocate funds appropriated for AOJ programs. Needs and priorities change during the year. Earmarks, funding floors and ceilings, and cumbersome reprogramming procedures limit our ability to respond. We do not seek to bypass congressional participation, but do seek greater discretionary authority.
  - Second, modification of FAA Section 660 limitations on police training assistance. Section 660 presently has so many exceptions as to make the prohibition almost meaningless. Our FAA discussion draft alleviates many of these restrictions. We intend to work with you to rationalize Section 660's prohibition and exceptions.

QUESTION

Mr. Wirth, in your testimony you state that you do not seek additional funding for legal reform, but request "greater discretion in how to spend the funds."

-- Could you explain what you mean by this?

ANSWER

- Major events sometimes occur that were not considered during the budget authorization and appropriation process. In 1990, a new government came unexpectedly to office in Nicaragua. In 1991, the Soviet Union disintegrated almost overnight. In 1993, Israel and the PLO signed a peace accord. However, Congressional procedures make it very difficult to adjust funding between appropriation cycles.
- Most AOJ funds are placed in regional assistance programs, with no possibility of shifting funds among regions. Other programs have funding floors or ceilings mandated by legislation or report language. Supplemental funding bills are rare and reprogramming procedures are cumbersome.
- I seek greater discretionary authority from Congress to allow us to shift funding or emphasis in AOJ programs in response to changes in the world. We would continue to consult closely with Congress during the entire process.

QUESTION:

Since the initiation of these programs, what lessons have been learned?

- An AID evaluation of the program has identified six AOJ objectives. Each poses major challenges and costs.
- Can we afford to pursue all six objectives in most countries?
- If we do not focus on all six in every country, do we risk dangerously empowering police over judges, or prosecutors over public defenders?

ANSWER:

- Ambassador Michel's prepared statement provided four key lessons learned from AOJ programs to date, the need for: (1) a long-term view, (2) local government political will, (3) internal demand, and (4) working in an integrated way with other U.S. efforts and other donors. The Department of State and DOJ fully concur with the points made.
- AID's Center for Development Information and Evaluation (CDIE) is nearing conclusion of a worldwide study of the AOJ program that utilizes four broad objectives -- legitimacy, autonomy, effectiveness and equity. These objectives may be pursued in a wide variety of ways and with respect to different elements of the justice system -- the courts, prosecutors, public defenders, police, prisons, bar associations, or public interest, advocacy or research groups active in justice issues. Specific project

objectives in a particular country may include enhancing the professional and management capabilities of specific institutions, law reform, creating public demand for better justice services, enhancing access to justice, and building consensus for judicial reform.

- While the four broad objectives reflect the ultimate goal of an AOJ project in any country, the means selected and thus the point(s) of emphasis will vary. We do not aim to cover all needs that may exist but rather to act as a catalyst for important groups or issues that can attract other support to their cause. In most countries where we are working, the needs are so great that our foreign assistance program could not possibly meet all the demands. Nor should it -- as our objective is to encourage local constituencies to take responsibility for their own justice systems.
- In designing projects and selecting beneficiaries, we consider the balance of power that exists among different institutions and actors in the particular justice system. In Latin America, for example, criminal investigative development assistance has focussed on the police and the courts, as they must work together to produce effective results. Wherever an active prosecutorial or accusatory system is being implemented with project support, we insist on the need for public defense. Our objective is to promote development of the proper checks and balances.

Question:

AOJ Programs were established in Latin America. What is planned and ongoing in terms of legal reform efforts elsewhere in the world?

- What are we doing to apply the lessons we have learned from our work over the last decade in Latin America?
- How do the problems we face in new programs elsewhere differ from those we confronted in Latin America?

Answer:

- In Latin America and the Caribbean, a second generation of programs is building on the successes and learning from the failures of past efforts. An initial emphasis on criminal justice has gradually expanded to include civil and commercial law areas. Ongoing initiatives include law revision and modernization; professional training and exchanges; human rights training; public education campaigns and support for private legal institutions; anti-corruption campaigns; introduction of alternative dispute resolution; improvements in physical infrastructure; and development of modern management systems.
- In Central and Eastern Europe, extensive efforts have been directed at developing the legal framework for democratic institutions including assistance in drafting and reviewing new constitutions and legislation.

- In Africa, nongovernmental organizations, using 116 (e) funds, focus on access to justice and legal assistance programs for the poor and under-represented. A new emphasis is being directed to promoting the legal underpinnings of economic reform.
- In the Near East, attention is devoted to the promotion of human rights and human rights education. A new program in Egypt provides direct assistance to the judiciary in the area of legal and civil rights.
- In the former Soviet Union, a major new effort is underway to support creative programs in commercial law, judicial reform and legal institution building. Local reform initiatives are being supported such as the program to support the introduction of jury trials in Russia.
- In Asia, assistance is channeled primarily through the Asia Foundation to local nongovernmental organizations that provide para-legal training and other forms of legal assistance for the disadvantaged. In addition, efforts to develop alternative dispute resolution mechanisms are underway.
- The lessons learned from the Latin America program are shared through evaluations, audits and the exchange of information among bureaus and professional colleagues within

USAID. Our experiences are also shared with other agencies through interagency coordination mechanisms, conferences and seminars for relevant technical experts.

- The problems faced in other parts of the world are not significantly different from those in Latin America. The approach may be different such as a focus on commercial and civil law reform in the NIS and Eastern Europe rather than leading with criminal justice systems as in the Latin American experience. However, the common emphasis on modernization, professionalization and improved access will ultimately lead to improved justice systems no matter the country or region, provided the assistance is based on a tangible host government commitment and/or the active cooperation of non governmental implementing agencies.



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AGENCY FOR INTERNATIONAL DEVELOPMENT  
Administration of Justice Activities  
FY 1993 Estimate (Thousands)

		DA/DFA	ESF	SAI/NIS	Total
Africa		4,248	469	---	4,717
Burundi					
695-0133	Democracy or Governance Activities	96	150	---	246
Ethiopia					
663-0007	Support for Democracy & Governance	125	---	---	125
Gambia					
635-0237	Financial & Private Enterprise Dev.	217	---	---	217
Guinea-Bissau					
657-0021	T&I Promotion Support	700	---	---	700
Malawi					
612-0243	Democratic/Civic Inst. Dev	135	---	---	135
Mozambique					
656-0227	Mozambique Democratic Initiatives	900	300	---	1,200
Nigeria					
620-0008	Nigeria Democracy Initiative/PA	---	19	---	19
Tanzania					
621-0176	Finance & Enterprise Development	400	---	---	400
621-0521	Program Development & Support	168	---	---	168
Uganda					
617-0128	Policy Analysis & Capacity Building	248	---	---	248
Africa Regional					
698-0541	Demo. & Human Rights Fund	917	---	---	917
698-0542	Democracy/Gove Prg. Dev & Support	342	---	---	342
Asia/Near East		1,335	---	---	1,335
Indonesia					
497-0364	Strengthening Institutional Development	838	---	---	838
Nepal					
367-0163	Democracy Project	497	---	---	497



AGENCY FOR INTERNATIONAL DEVELOPMENT  
Administration of Justice Activities  
FY 1993 Estimate (Thousands)

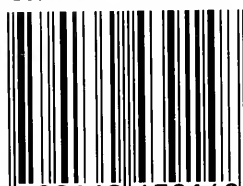
		DA/DFA	ESF	SAI/NIS	Total
<hr/>					
Europe/NIS		---	1,873	9,690	11,563
Eastern European Regional					
180-0020	Rule of Law	---	---	1,554	1,554
180-0052	Customs Service Training	---	---	500	500
NIS Regional					
110-0007	Democratic Pluralism Initiative	---	1,366	5,506	6,872
110-0008	Housing Sector Reform	---	107	1,730	1,837
110-0010	Foundation Technical Assistance & Trng.	---	400	400	800
Latin America & Caribbean		2,262	42,043	0	44,305
Bolivia					
511-0626	Bolivia Administration of Justice	---	3,200	---	3,200
Colombia					
514-9002	Colombia Justice Sector Reform	---	12,776	---	12,776
Costa Rica					
515-0244	Justice Sector Improvement	500	---	---	500
El Salvador					
519-0376	Judicial Reform II	---	2,970	---	2,970
519-0408	Economic Policy Reform	---	8,250	---	8,250
Guatemala					
520-0000	Program Development & Support	82	---	---	82
520-407	Judicial Sector Reform Support	---	2,450	---	2,450
Haiti					
521-0236	Democratic Enhancement	70	195	---	265
521-0238	Administration of Justice	---	1,800	---	1,800
Honduras					
522-0296	Strengthening Democratic Institutions	---	558	---	558
Jamaica					
532-0175	Sustainable Justice Reform	1,000	---	---	1,000
Nicaragua					
524-0316	Strengthening Democratic Institutions	210	630	---	840
Panama					
525-0305	Improving Police Services	---	2,108	---	2,108

AGENCY FOR INTERNATIONAL DEVELOPMENT  
Administration of Justice Activities  
FY 1993 Estimate (Thousands)

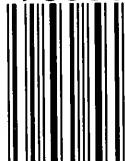
	DA/DFA	ESF	SAI/NIS	Total
Caribbean Regional				
538-0645 Caribbean Justice Improvement	400	---	---	400
LAC Regional				
598-0642 Regional Administration of Justice	---	2,345	---	2,345
598-0644 Intl Investigative Trg Assistance Prog	---	4,000	---	4,000
598-0669 Regional AOJ Support Project	---	761	---	761
Global, Field Support & Research	1,542	---	---	1,542
936-5063 U.S. University Development Linkage	65	---	---	65
930-0100 WID Strategies & Resources	240	---	---	240
936-2750 Women's Organizations & Participation	368	---	---	368
940-0015 Institutional Reform & Informal Sector	869	---	---	869
Policy & Program Coordination	870	---	---	870
930-0085 Integrated Studies & Systems	430	---	---	430
930-0232 Information as a Tool in Development	440	---	---	440
Africa	4,248	469	---	4,717
Asia/Near East	1,335	---	---	1,335
Europe/NIS	---	1,873	9,690	11,563
Latin American & Caribbean	2,262	42,043	---	44,305
Central Bureaus	2,412	---	---	2,412
TOTAL	10,257	44,385	9,690	64,332



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